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#### EXTRAORDINARY

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## NEW DELHI, FRIDAY, JUNE 11, 1954

#### MINISTRY OF LABOUR

#### NOTIFICATIONS

New Delhi, the 25th May 1954

S.B.O. 1944.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the Bombay Life Assurance Co. Ltd., Bombay, and their workmen:—

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA. 20/1, Gurusaday Road, Ballygunge, Calcutta-19.

#### PRESENT:

Shri C. Bhaktavatsalu Naidu, B.A., B.L., Chairman.

REFERENCE No. 3 of 1953

#### BETWEEN

The Employers in relation to the Bombay Life Assurance Company Ltd., Bombay,

#### A NID

Their employees in the Head Office. Branch Offices, Inspectorates and all other offices of the Company including Chief Agencies.

#### APPEARANCES:

Shri B. Narayanaswamy, Advocate, instructed by Shri K. Balasubramaniam, Manager and Actuary and Shri R. Ramanathan, Law Officer, for the Assurance Company.

Shri D. H. Buch, General Secretary, instructed by Shri M. A. Ajinkya, President, Shri C. Pimenta, Joint Secretary and Shri E. A. Sethna, for the Employees Association.

#### AWARD

By Order No. LR.90(17), dated the 1st August 1953 the industrial dispute existing between the Bombay Life Assurance Co. Ltd., Bombay, and their employees in the Head Office, Branch Offices, Inspectorates and all other offices of the Company including Chief Agencies in respect of the matters specified in the schedule annexed to the order was referred to the Central Government Industrial Tribunal, Calcutta, for adjudication. The said order having been issued prior to my appointment as Chairman, Central Government Industrial Tribunal, another Order No. LR.90(17), dated the 13th August 1953 referring the dispute to me for adjudication was passed in supersession of the previous order.

- 2. The items of dispute set out in the schedule to the order are the following:—
  - SCHEDULE
    1. Scales of pay;
  - 2. Dearness allowance;
  - 3. Allowances for specialised type of work;
  - Gratuity;
  - 5. Bonus for the years 1948 to 1952;
  - 6. Working Hours;
  - 7. Leave:
  - 8. Payment of increments to certain employees in the Head Office in terms of the Shah Award;
  - Reinstatement of, and/or compensation for, Shri Vichare;
  - 10. Inclusion of the service of employees previously working under the chief agencies of the company rendered under such chief agencies for the purposes of determining their entry into the company's service and for entitling them to the benefits and privileges of service under the Company.
- 3. Notices were issued to the parties on the 7th August 1953 calling upon them to file their statement of claims and the written statement but in view of the revised order which was received only on the 26th August 1953 fresh notices were issued to the parties on the 27th August 1953. The Bombay Life Employees' Association, Bombay, filed a statement of claim on the 8th October 1953 and the employer company filed a written statement on the 9th December 1953.
- 4. The case of the employees as set out in the statement of claim is to the following effect: The industrial dispute arises out of the submission of the demands made by the Association to the Company in the form of a charter of demands dated the 2nd February 1951. The charter of demands which is annexed to the statement of claim consists of 29 items. The Company not having acknowledged receipt of the letter forwarding the charter of demands and not having indicated their reaction to the said demands the Association sought the intervention of the Conciliation Officer by letter dated 21st February 1951 and prolonged conciliation proceedings ensued and in spite of the best efforts no settlement has been reached on account of active anti-Union attitude which the company developed since 1942.
- 5. Before dealing with the several demands contained in the charter of demands the Association has set forth the history of the Employer-Employee relationship during the period commencing from the 3rd February 1942 and ending with 21st March 1953. Reference is made to the existing terms and conditions of service in the Company as a result of the award of Shri M. C. Shah which was published on 21st April 1949. Reference is also made to the instances of breach of the award by the company and also to the granting of discriminatory increments by the management.
- 6. Referring to the history of the Employer-Employee relationship it is stated that the Company took up a hostile attitude towards the request of the Company's employees on the 3rd February 1942 for payment of Dearness Allowance and Bonus; and this is said to have led to the formation of the Union of the Bombay Life employees on the 19th February 1942. As soon as the company came to know about the formation of the Union, the Company assumed unexpectedly hostile attitude and passed a resolution at a meeting of the Directors on the 4th May 1942 by which they disapproved the formation of the Union and required the Managing Director and the officers of the company to exercise their influence against it and also decided to take necessary action including dismissals in the event of the Union being formed. The Union contested the election of the Company's Sports Club and succeeded in getting into the management of the club and as a result the management withdrew financial support to the sports club. The management thereafter began to harass the Union men particularly the office bearers as a result of which the principal and active Union workers were either compelled to resign or were discharged or dismissed on one pretext or another. On 3rd August 1946, the Union reformed and revitalised itself under the Presidentship of late Shri R. S. Nimbkar and presented a list of demands to the Company on 19th August 1946. Then followed dismissals of the principal office bearers of the Union. The demands were not complied with and the workmen went on strike on 16th December 1946. The strike lasted for 73 days and came to an end on 25th February 1947 when the matter was referred to adjudication. In the meantime there was an illegal lock-out of the striking employees. At the intervention of the Government of Bombay the workmen called off the strike but the Company continued to keep out a large

number of members who were senior in service and as a result the management was prosecuted and convicted. The order of reference was challenged by the Company in the High Court of Bombay but the application was dismissed. The Government referred the pending disputes to an industrial tribunal constituted under the Industrial Disputes  $\Lambda$ ct, 1947. The Company again applied to the High Court of Bombay for quashing the reference but that application was also dismissed.

- 7. Instances are then cited of alleged victimization of employees who were active Union workers, viz. (1) Shri H. M. Reshamwalia and Shri G. G. Godbole, who were suspended in January 1948 but allowed to rejoin duty in January 1949 after the dispute was referred to adjudication; (2) suspension and subsequent discharge of Shri P. D. Patel, an active member of the Managing Committee in July 1948 on the alleged ground of having destroyed certain documents; (3) Shri Hanumant Patil, an active member of the Union dismissed in January 1950; (4) Shri K. S. Philip, Vice-President of the Union, who was insulted and humiliated by the Manager and who resigned on the spot in April 1950; (5) Shri J. M. Desai, General Secretary of the Union, who was transferred in May 1950 and who subsequently resigned on account of harassment and ill-treatment by the Branch Manager; (6) Shri P. R. Namjoshi, General Secretary of the Union, who was transferred to Hyderabad (Deccan); and who however succumbed to the wishes of the management and apologised and severed his connection with the Union in July 1950; (7) In the same month of July 1950 Shri D. Cabrol, an active member of the Union, was similarly transferred and his services were treated as terminated; (8) on September 1951 Shri C. Pimenta, Joint Secretary of the Union, received orders restricting his movements in the office and in January 1952 he was transferred from the Valuation to Adrema Department and he was required to do the work of removing plates for about a month and a half; (9) Shri M. G. Despande, the Treasurer of the Union, whose services were terminated in 1952 on the allegations of indulging in rude behaviour; (11) Shri Y. K. Vichare, a member of the Managing Committee of the Union, was discharged by the management on 21st March 1953. He was charged with washing and combing in leisurely manner and wasting time in smoking during office hours. The only conclusion to be drawn is that the present management is determined to carry out anti-Union policy with full vigour as embod
- 8. Turning to the existing terms and conditions of service in the Company it is stated that so far as branches are concerned there are no fixed scales of pay or Dearness Allowance and there are no benefits for them as are available to the staff of the head office and the total earnings of a clerical and subordinate employee at most of the branch offices are far below the minimum level of subsistence. The award of Shri M. C. Shah related to the Head Office employees at Bombay. There were two further references to the Tribunal consisting of Shri P. S. Bakhale who passed an Award with regard to Bonus for the year 1947, to the procedure to be followed before dismissal and to the reinstatement of certain employees. The salary scales as per Shri M. C. Shah's award are set out and it is stated that increments to some of the employees have not been given according to the said Award. From 1946 onwards, soon after the strike the Company introduced the practice of keeping employees on temporary basis for an indefinite period. The Company did not treat Shri V. A. Kanhare, K. N. Vaidya and S. R. Savardekar as confirmed employees with effect from 1st January 1947 thus depriving them of their two annual increments. They have to be given the benefits of two lost increments as per Shri M. C. Shah's award. Complaint is made of discriminatory and favourite treatment to certain employees with a view to making them anti-Union and through them carry on anti-Union propaganda. As special increments are given to even junior employees as an incentive to their not joining the Union the management holds back a section of employees from joining the Union by this method. Seniormost employees like Shri M. A. Ajinkya, the President of the Union, and Shri H. G. Deshpande, Treasurer of the Union, have been denied promotion and consequent increases in pay due to them.
- 9. Then the statement of claim proceeds to set out the demands made under the Charter of Demands dated 2nd February 1951 under which scales of pay for the Head Office have been asked to be revised and the same scales have been asked to be made applicable to the branches. It is stated that the demands are reasonable and justified and that the award should have retrospective effect from the date of the Charter of Demands with point to point adjustment as the reference by Government has been unreasonably delayed.
- 10. Demand No. 1: Scale of Pay.—The salary scales should be Rs. 100-10-180-15-270-20-350 in 18 years without any efficiency bar. These scales should be given to the clerks in Head Office, Branches as well as Chief Agency Offices. A

new grade called Record Grade should be formed to which Peons who have completed 5 years of service and who have passed 5th Standard should be transferred and given the scale of Rs. 60—5—150 in 18 years without any efficiency bar. Subordinate staff such as Peons, Liftman, Watchman, Sweepers should be put in the grade of Rs. 50—3—104 in 18 years without any efficiency bar. The number of employees in the Head Office is 167 as clerks and 30 as subordinate staff. In the 29 branches, sub-Branches and Inspectorate Offices the total number of employees is about 113. The reason for asking for a revision is stated to be that the award of 1949 was made in respect of demands submitted on 16th August 1946 and during the pendency of the reference the 1946 standard of living changed as also the standards of fixation of pay. Shri Subramanyam's statistical enquiry into the middle class standard of living has revealed a new basis for assessment. As per the awards of Tribunals and the principles embodied therein the minimum total emoluments of a middle class employee at present should at least be Rs. 250 per month and the present emoluments make it possible for the employees only to eke out a living below the 'poverty line'. The wage to be fixed should approximate the living wage standard of Rs. 55 for a worker in 1939 recommended by the Textile Labour Enquiry Committee (Bombay) and should not be based on the recommendations of the Central Pay Commission which do not guarantee even the nutritional minimum to the employees. Account should be taken of the revision of the scale of Dearness Allowance and the wages fixed by Sen-Tribunal. The scales for subordinate staff have been fixed at Rs. 50—3—104 on the basis of cost of living index being 160 which is modest when compared to the living wage of Rs. 55 at 100 points. On the basis of Rajadhyaksha award the living wage standard for a middle class family should be Rs. 99 and taking the cost of living index at 160 points the living wage figure would stand at Rs. 160 and the demand of

11. The Company has been in a very sound financial position from every point of view and has for the past 45 years made enormous profits and the Company's business has been increasing from year to year. Three factors which govern the profit making capacity of a life insurance company are: (1) Mortality, (2) Interest, and (3) Expenses and according to the Company's own admission "the mortality experience of the Company continues to be satisfactory". The Company's total business in force was Rs. 16.93 Crores in 1947 and Rs. 24 Crores in 1952 which proves the increasing capacity to pay. In 1952 the Company wrote a record business of Rs. 4.85 Crores which shows that within five years since 1947 it has written a new business more than 1½ times as large as in 1947. During the last five years the Company's premium income and income from other sources have substantially increased. It is about 1½ times as in 1947. The Company has been continuously paying to its shareholders a dividend of 12 per cent. as returns by way of dividend and bonus. The Life Assurance Fund of the Company has substantially increased every year during the last ten years. While it was Rs. 2.30 Crores in 1943, it increased to Rs. 6.34 Crores in 1952. This steady progress is to a large extent due to the co-operation, efficiency and devotion to the Institution on the part of its employees. The Company has also taken appropriate steps since 1934 to increase the interest yield or to prevent its declining by investing funds in Government securities and shares of sound joint stock concerns. The Company has also taken steps to organise its business extensively with a view to effecting economy in the expenses of management etc. The third factor viz. of expenses is also quite favourable. While the renewal expense ratio was 15.11 in 1947, it decreased to 14.96 in 1952. In 1947 the Company revised its premium rates substantially, basing the new premium on the assumption on a low interest yield in view of the cheap money policy followed by Government and now th

employee with reasonable chances of finding alternative suitable employment elsewhere. The demand is therefore made that the management should confirm all employees at the end of the sixth month or else terminate their services once and for ever.

12. Dearness Allowance.—Under Shri M. C. Shah's award the present Dearness Allowance is:

Salary upto Rs. 100 (inclusive)... Rs. 40.
Salary Rs. 101 to Rs. 210 ... Rs. 31 plus 10 per cent. of salary.
Salary Rs. 201 to Rs. 350 ... Rs. 35 plus 10 per cent. of salary.
For Lower Grade Stuff Dearness Allowance is fixed at Rs. 30.

Dearness Allowance at branches is being paid on salary.

Up to Rs. 100 (inclusive) . . Rs. 35.

Over Rs. 100

Rs. 35 plus allowance of Re. 1 for every excess salary of Rs. 8 or part thereof subject to a maximum of

Subordinate staff Rs. 25.

The Dearness Allowance which is being paid is not adequate as the cost of living for working class has risen from average 279 point in 1947 to 360 point average in 1953. Moreover the cost of living index figures do not at all reflect actual rise in cost of living. The cost of living has gone up terribly since the last award due to several factors, among others:

- (1) Increase in food prices;
- (2) Increase in controlled prices of some of the articles of essential needs;
- (3) Cost of supplementing the rationed articles;
- (4) Rise in the prices of medicines and doctors' fees;
- (5) Rises in school fees, price of school books and stationery articles;
- (6) Standard rent fixed by the Government for new buildings is much higher than the old rent.

Due to unemployment on account of retrenchment in the Government department and in other undertakings the burden on some of the members of the staff has increased. Since there is no likelihood of prices going down to pre-war level, a proportion of Dearness Allowance has got to be absorbed in basic pay. The adequate scales of Dearness Allowance according to the Association is as follows:

Salary upto Rs. 100 (inclusive) . . Rs. 80.
Salary Rs. 101 to Rs. 200 . . Rs. 70 plus 10 per cent. of the salary.
Salary Rs. 201 to Rs. 350 . . Rs. 75 plus 5 per cent. of the salary.
Subordinate staff a fixed sum of Rs. 70.

Dearness Allowance in full should be paid to an employee even if he is on leave or on loss of pay. When the employee is on leave or on half pay Dearness Allowance in accordance with the scales demanded should be paid.

- 13. Allowances for specialised type of work.—Extra payment should be made in consideration of special skill or responsibility. Allowances should be paid to graduates and Diploma holders as per demand No. 2 of the Association.
- 14. Acting Allowance.—The Assistant who acts in the place of the Departmental Head should get an acting allowance of Rs. 30 at the head office and the Assistant who acts in place of a Branch Manager or Cashier or the Assistant Cashier who acts for the Cashier or Branch Manager should get an allowance of Rs. 40 and Rs. 25 respectively. The Peon who acts in place of Havildar should get an allowance of Rs. 20 and a Peon who acts in place of a Liftman should get an acting allowance of Rs. 15. The acting allowance should be calculated on monthly basis and payable for any period of one week or over.
- 15. Other Allowances.—Employees operating machines such as Franking, Hollerith, Comptometer, Typewriter and Adrema should be paid Rs. 20 per mensem. Shri K. N. R. Pillai, who was appointed as an operator of Punching machine should be paid allowance at the same rate from the date of his appointment till the date of his resignation.
- 16. Assistant who handles cash and Bank Peons should be given allowance at the rate of Rs. 20 per mensem. Service and Delivery Peons should be given allowance at the rate of Rs. 20 per mensem. Overtime allowance should be paid as per demand of the Association.

- 17. Gratuity.—The scale of gratuity fixed by the award of Shri M. C. Shah should be applicable to Branch and other employees. It should be made effective from 2nd February 1951 to all the employees and if any employee has retired or died since 2nd February 1951 they or their heirs should get the benefit of the award. Gratuity should be given as per demand No. 12.
- 18. Bonus.—Yearly Bonus equal to two months' salary should be paid and employees who have put in less than a year's service should be paid an amount proportionate to the period of service put in. By a letter dated 30th March 1950 the Association asked the management to pay the bonus equal to two months salary but the company gave no reply. For the years 1947 to 1952 the other companies in Bombay and elsewhere have paid bonus of 1½, 2 and 2½ months' salary and even three months' in one case. Arrears of proportionate bonus for the years 1947 to 1952 even to those employees who may not be in service should be paid.
- 19. Working Hours.—The working hours of the head office should be granted as per Demand No. 10 and the number of working hours at the branches should be equal to that of the head office.
- 20. Leave.—All employees should be granted leave according to demand No. 15. The company grants a month's leave at present after a period of 12 months service.
- 21. Payment of increments to certain employees at Head Office in terms of Shah Award.—The Company has not granted increment to certain employees after the completion of 12 months' service as per Shah Award. Those increments should be restored and necessary adjustment should be made in the present emoluments and the Company should be directed to pay the arrears.
- 22. Reinstatement of and/or compensation for Shri Y. K. Vichare.—The discharge of Shri Vichare is only one instance of the continued anti-Union policy of the management. The Bombay Provincial National Trade Union Congress wrote a letter dated 23rd May 1952 to the Company asking them to reorientate their policy vis-a-vis their trade union movement, but this approach failed for want of response from the Directors. Shri Vichare is a member of the Managing Committee, and his discharge is in contravention of Section 33 of the Industrial Disputes Act. It is also otherwise improper and illegal as he has been discharged without following proper procedure laid down by Shri Bakhale's award. The discharge is discriminatory and not justified and is in the nature of unfair labour practice and is made mala fide and in furtherance of the declared anti-Union policy of the Government.
- 23. As regards Chief Agencies there are at present Chief Agencies of Messrs. Kochikar Bros. Ltd., Udipi, Bangalore, Mangalore, Madura and Coimbatore and on grounds of humanity and equity, the period of service of employees with the Chief Agents should be counted for the purpose of promotion, leave, gratuity, pension, Provident Fund, etc. as the employees of the Chief Agents have been doing no other work except that connected with the Company's affairs.
- 24. Adjustments—Salaries and Dearness Allowance.—Adjustment in salaries and dearness allowance should be made on point to point basis and retrospective effect should be given from the date of the Charter of Demands.
- 25. In the written statement of the Company before referring to the several demands made in the Charter of Demands certain preliminary submissions have been made and they are as follows: The scales of pay, allowances and other terms and conditions of service were fixed so recently as April 1949 by the Industrial Tribunal presided over by Shri M. C. Shah, on a similar set of demands and awards relating to wage scale, Dearness Allowance etc. being long term awards any disturbance thereof except on special and extraordinary contingencies is highly injurious and ought not to be done. This is the trend of decisions by the Labour Appellate Tribunal in 1951 II LLJ. p. 31 and 1951 I LLJ. p. 469. No special circumstances have arisen between April 1949 and February 1951 when fresh demands were presented which would warrant a fresh enquiry into the same questions. The employees in the Oriental Government Security Life Assurance Co. Ltd. put forward a fresh set of demands and when matter was referred to the Central Government Industrial Tribunal presided over by Mr. S. P. Varma, the Tribunal rejected the demands made by workmen and confirmed the wage and other conditions of service prescribed by Shri Shah in his previous award. Hence the demands of the employees in this case must be rejected. Other allegations made by the employees have been made only with a view to prejudice the issues. Any action which the management felt obliged to take over a period of many years against any individual employee in its service was so taken either in the interest

of discipline or by reason of administrative necessity. Similar allegations were made before Shri Shah and he in his award has stated that it is not true to suggest that the Company had continued all along a policy of harassment and victimisation against those who had joined the Union or had taken an active part in it. The statements in paragraphs 7 to 28 of the statement of claim have to be ignored as irrelevant and they are also untrue and incorrect. The Company denies that increments due to some of the employees have not been given according to Shah's award or that the Company after the employees' strike introduced the practice of keeping employees on temporary basis for an indefinite period. The management takes up the question of confirming employees from time to time and suitable temporary employees are and have been confirmed in the Company's services. The Company also denies that there has been any breach of Shri Shah's award in regard to the confirmation of Sarvashri V. A. Kanahere, K. N. Vaidya and S. R. Sawardekar since there has been only a recommendation for confirmation in their case and there cannot be breach of the award. The Company denies that it gave "discriminatory and favourite treatment" to certain employees with a view to make them anti-Union. Increments are given as per Shri Shah's award and additional increments are also given to deserving employees on the merits of each case with a view to encourage talent and as an incentive to better performance in future. No uniform salary scales can be prescribed for employees both at the head office and those of the branches since the nature of work discharged by the employees of the branches is of a mere ordinary and routine type and more responsible duties such as accepting proposals, preparing policies, admission of agc, registration of assignments and loans on policies are sanctioned at the Head Office and the claim under the policy is also settled by Shri Shah in the award given by him in the case of Oriental Government Security Life Assuranc

26. Then turning to the demands the following contentions are raised:

Demand No. 1: Scales of Pay.—The grades at present prevailing are grades fixed by Shri Shah which he considered to be equitable and fair. Appendix I shows the scales obtaining in 'Oriental' and other well established life insurance companies and when a comparison is made with the scales of pay in this Company, it will be found that the scales of pay in this Company are fair and equitable. There is no precedent for a starting salary of Rs. 100 of a clerk in any commercial firm and in any case the Company cannot afford it and opposes it as being excessive, exorbitant and unreasonable. As regards the demand that the maximum of the grade should be reached in 18 years without any efficiency bars, the matter has been gone into by Sir H. V. Divatia, who considered the provision of efficiency bars to be fair and reasonable. The present scale of pay should therefore be retained. The Company cannot be compelled to create a Record Grade as demanded for providing Peons but the Company may consider the creation of a Junior Assistant's grade for clerical work in the Company. The Peons shall not be eligible for employment in that grade. As regards the demand about subordinate staff, the present salary scales are reasonable and compare more favourably with similar scales in other life assurance companies and hence the present scales of pay generally need no revision.

27. The Company has 29 Branches and sub-Offices and the number of employees both clerical and subordinate in all these offices total 112 of whom the clerical employees number only 72. The cost of living is different in different areas and there can therefore be no uniform scales of pay. It is not correct to state that no systematic increments are given to the employees at the Branches and sub-offices. On the other hand employees are given regular increments during the past 6 or 7 years. They are also paid Dearness Allowance of Rs. 35 up to Rs. 100 and Rs. 35 plus Re. 1 for every Rs. 8 salary or fraction thereof subject to a maximum of Rs. 45. Subordinate staff are paid a flat rate of Rs. 25. No uniform scale of salary at the various branches and sub-offices can be laid down. The scale laid down should be very much lower than the scale for the clerical employees at the head office. As regards the employees under Chief Agents they are paid

salaries by the Chief Agents who are not parties to this dispute. Hence this demand has to be rejected. As regards the employees' case for revision and upgrading of salaries and other allowances it is true that the employees' previous demands were made in August 1946 but the award itself was given in April 1949 after taking into consideration the conditions prevailing on the date of the award. It is only on a consideration of the wage structure prevalent at the time of the award and all other relevant facts and data in that regard including the capacity of the Company to pay Shri Shah prescribed the scales of pay and allowances etc. All India Cost of Living Index in the years 1945 to 1951 shows that while the average was 100 points in 1945 it rose to 106 in 1946, to 120 in 1947, to 134 in 1948, to 138 in 1949 and 139 in January 1951 so that rise in the index had gone up only by one or two points beyond 1949 level. Reference is made to concept of the living wage in the Fair Wages Committee Report wherein it is stated that "while the lower limit of the fair wage must obviously be a minimum wage, the upper limit is equally set by what may broadly be called the capacity of the industry to pay". This and other principles in Fair Wages Committee Report have been adopted by the Labour Appellate Tribunal in 1951 II LLJ. p. 183 and 1952 I LLJ. p. 822. The figures arrived at by Mr. Subramaniam in his Report are not at all applicable in respect of employees of business concerns and there were also serious defects in the procedure followed by Shri Subramaniam in regard to the enquiry. The Report is not only a study of under-estimates but actually a study of biassed over-estimates and reference is made to the observations of the Sastry-award and of the Labour Appellate Tribunal. The pay scales of the Company compare very favourably with similar scales in other companies and cannot be revised.

28. Turning to the capacity to pay it will be necessary to stress the peculiar nature of life insurance business which differs fundamentally from other business of manufacturing or trading concerns. Insurance business has to be carried on under limitations statutory and otherwise. The statutory limitations are in two directions (1) the compulsion to invest and keep invested 85 per cent. of the life insurance fund in Government Securities and approved investments and (2) to keep the expense ratio of the company within certain prescribed limits. The premiums are charged by taking a forecast of (1) Expense, (2) Interest and (3) Mortality and if the actual experience under any of these three main heads goes adverse, it is not open to the Company to adjust the premiums which have already been fixed. The rate of interest earned by the Company on its fund has been steadily declining from 1932 onwards, and the Company has to face the necessity for providing deprectation in the market value of the existing investments. The expense ratio during recent years has risen substantially above the anticipations and hence the premiums actually received have become inadequate. The renewal expenses have been for some years even nearly double the amount provided for it in the premia under policies issued up to September 1947 and any further increase in the expenses would only result in worsening the position. The permissible renewal expense ratio for the company is 15 per cent. and any excess over this rate would be transgressing permissible limits and entail disciplinary action. It is not the volume of existing business or new business currently written that matters but the question is whether such business had been underwritten that matters but the question is whether such business had been underwritten at remunerative rates having regard to the interest earned on the investments, expenses incurred and the mortality experienced in relation to the premiums received. Much of the business in force on the books of the Company written

29. A material feature largely reflecting the prosperity of an insurance company is the bonus that it declare on its 'With Profit' policies at its successive actuarial valuations and the Appendix IV will show that the Company has been forced to progressively reduce the quantum of bonus from 1934 onwards and in some years no bonus was even declared. The economic situation of the country is also abnormal and full of uncertainties and hence no additional burden on the resource of the Company should be enforced. Reference is made to the observations of the Planning Commission's report where it is stated that an increase in wages should therefore be avoided except to remove anomalies or where the existing rates are abnormally low. As regards the employees' contributions to the prosperity of the Company it is stated that it is a combined effort of the vast field organization in turn directed and controlled by the officers of the Head Office which is responsible for the growth and spread of the industry and the volume of the business the Company writes up day by day and year by year, and that the contribution made by the salaried employees both at the Head Office and the Branches for the successful working of the Company is.

- 30. Annual increments.—The salary scales have been fixed by Shri Shah giving due consideration to the points raised by the Union or Association. Maximum amount of the salary scale at the end of the term has to be fixed having regard to the scales of pay obtaining in comparable institutions and the Company's own capacity to pay. The Company denies the allegation made on the subject of confirmation of employees and states that the discretion of the management should not be controlled by setting up a time limit for confirmation.
- 31. Dearness Allowance.—As regards dearness allowance the amount fixed by Shri Shah in his award is already high and compares favourably with the dearness allowance paid by other insurance companies. Dearness Allowance paid in 'Hindusthan', 'Bharat' and 'National' are very much less than in this Company and hence the Dearness Allowance cannot be said to be low. The demand that a portion of the dearness allowance should be absorbed in basic wage does not strictly fall within the scope of this adjudication. The claim for a uniform rate of dearness allowance for the employees at the head office and other places is unreasonable as the cost of living is not uniform in all the places. The claim that full dearness allowance should be paid to an employee who goes on leave on half pay or loss of pay is very unreasonable. As regards allowances for specialized type of work it is stated that the demand of three additional increments to a graduate clerk is quite unreasonable. The company has already paid all its employees the legitimate Dearness Allowance due to them.
- 32. As regards acting allowance the direction of Shri Shah is being observed and demand similar to the one now made has been rejected in the award of the Oriental Life Assurance. The acting allowance claimed in the Branches is arbitrary and excessive. It is not necessary to provide for any acting allowance in the case of a Peon who is made to act as a Liftman.
- 33. As regards machine allowance, Rs. 10 is being allowed by Shri Shah's award. The question of allowance for typist was considered and rejected by Shri Shah. Working on Franking machine, Hollerith, Punching machines and Comptometers are not such exacting jobs as require additional allowance. Shri Pillai was operating only Hollerith Punching machine and hence no allowance was due. An allowance for service and delivery peon is not called for. Similar demand made in the Oriental Life Assurance case has been rejected by Shri Shah.
- 34. The demand for overtime allowance is not one of the matters referred to the Tribunal for adjudication. The demand made in the previous case was rejected by Shri Shah. Present rule regarding overtime allowance for working on holidays is quite fair and should be allowed to continue.
- 35. The claim of gratuity prescribed by Shri Shah is very liberal and compares very favourably with similar schemes of gratuity settled for other Insurance Companies. The gratuity benefits settled by Shri Shah in the case of 'Asian' are only just about half of scales in this Company. The demand for gratuity for voluntary retirement or resignation even after two years of service is most unreasonable and if granted will place an unduly heavy burden on the Company without corresponding benefit. The rules regarding gratuity prescribed in the case of 'Oriental' by Shri Shah should equally apply to the employees of the Company and the present gratuity benefit should be modified accordingly. The scale of gratuity benefits for the employees in the branches should apply with effect from the date of award and not from 2nd February 1951.
- 36. Bonus.—In 1946 the employees demanded payment of an annual bonus to every employee equivalent to two months salary for each of the 7 years 1940 to 1946. Shri Shah, the adjudicator, upheld the conteniton of the company that it was justified in not paying any bonds for the five years 1940 to 1944 and awarded bonus for 1945 and 1946 equivalent to 1/12th of the basic salary earned in each of the said two years instead of two months' salary claimed. For the year 1947 as per agreement before Shri Bakhale, adjudicator a bonus equal to one month's salary was paid in view of Shri Shah's award for 1945 adn 1946. The question relating to the bonus for the year 1948 was not referred to Shri Bakhale for adjudication. For each of the years 1948 to 1952 the Company has paid the employees a bonus equal to one month's basic salary more as a gesture of good will to the employees than on the basic of any profits. The surplus disclosed as a result of the quinquennium valuation as on 31st December 1951 has already been allotted and distributed to the policy holders and any additional bonus for the years 1948 to 1952 if now granted will have to be taken as expense in the current or the next year. Such heavy charges will considerably increase the expense ratio and it will not also be fair to the policy-holders who share in the surplus of the crurent valuation period. Even with the payment of bonus equal to one month's salary the expense ratio of the company during the years 1947 to 1952 was 15·11, 16·01, 15·42, 15·93, 14·89 and 14·96 in the years 1947 to 1952 respectively as against a statutory limit of 15 per cent. Additional bonus if now given will increase the current expense ratio beyond the statutory limit. There can be no comparison of the bonus paid by other companies as individual companies' profits

- 37. Working Hours.—As per Shri Shah's award the effecting working hours in the company are 6½ hours in all working days except Saturdays and 4 hours on Saturdays. For the Peons it is 8 hours on week days and 5 hours on Saturdays. The demand which seeks to reduce the working hours from 35½ hours to 33 hours per week and 45 hours to 39 hours per week in the case of the Peons cannot be allowed as it goes against the recommendations of the Central Pay Commission and the Sastry award. The company demands an increase in the present working hours. The working hours for the Peons at present are in no way unfair and reasonable and should be allowed to stand. The watchman is not working during day time. The working hours for the liftmen cannot be reduced.
- 38. Leave.—The leave privileges given under Shri Shah's award are very liberal and compare favourably with the leave rules in most life insurance companies. Shri Divetia prescribed similar leave for the big Banks and Shri Shah has granted similar leave rules in the case of 'Asian'. The demand for 20 days Casual Leave was rejected by Shri M. C. Shah. A similar demand by the employees of 'Oriental' has also been rejected. The Casual Leave demanded is unjustified. Casual should not be granted for more than 4 days at a time and holidays and Sundays should not be combined with such leave. Privilege leave has been already prescribed in Shri Shah's award but the actual grant of the leave would depend upon the exigencies of office work. Application for privilege leave should be made sufficiently early. The management should have full discretion to refuse leave in the interest of office work. Earned leave would lapse on the date when an employee ceases to be in the service of the Company.
- 39. As regards payment of increments to certain employees at the head office in terms of Shri Shah's award, the claim is vague and indefinite. As per established practice increments are not given to temporary employees. There is nothing in Shri Shah's award to militate against the settled rule of practice in the company.
- 40. Reinstatement of and/or compensation for Shri V. K. Vichare.—The discharge of Shri Vichare is not due to any anti-Union policy. The company has no information as to whether he is a member of the Union or whether he is a member of the Managing Committee or not. His services were dispensed with on account of his continued and wilful misconduct and in the interest of maintaining discipline in the office. For a period of two years and more before his date of discharge Shri Vichare was guilty of habitual neglect of work and serious breach of discipline. He had been found and warned continuously for wasting time, for constantly loitering in the corridors, for not attending to the work, for commencing the work late and returning to office late after launch interval. Inspite of warnings Shri Vichare's conduct did not improve. On 9th March 1953 at about 4 p.m. Shri Vichare was found by the Manager actually wasting his time in the stair case of the office, smoking and collecting round others and talking to them. He did not resume work in spite of his being told that he should not waste time. On 10th March 1953 at about 4 p.m. Shri Vichare was sitting idle in his seat and talking to his neighbour and was not doing any work. When questioned by the Manager personally about this Shri Vichare did not give any satisfactory reply. Explanation given in writing was also not satisfactory. For these misconducts Shri Vichare was asked to show cause why his services should not be dispensed with by letters, dated 10th March and 13th March 1953. In his letters dated 13th March 1953 and 17th March 1953 Shri Vichare he denied the charges and imputed motives to management and cast aspersions against their integrity and hence it was impossible for the management to tolerate such flagrant breach of discipline and misconduct. Shri Vichare was discharged only after he was given repeated opportunity to improve his misconduct. He was the him by letters dated 9th, 10th and 11th March 1953. The company terminated services only after consideri

41. Inclusion of services of employees previously working under the Chief Agencies of the company, rendered under such Chief Agencies for the purpose of determining their entry into the Company's service and for entitling them to the benefits and privileges under the company.

This demand is extremely unreasonable as the company's Chief Agencies are not the employees of the company. When some Chief Agencies were closed the company took over some of the employees who were formerly serving under Chief Agents as fresh recruits and hence their services can only commence from the date on which they were so taken up. The employees have only to look to the Chief Agents for relief. A similar demand made in the case of 'Oriental' was rejected by Shri S. P. Varma, adjudicator.

- 42. Adjustments.—Any adjustment in the salary or dearness allowance should no be ordered to be made on point to point basis as this method is discarded by almost all the Industrial Tribunals. This method was also rejected by Shri M. C. Shah. The demand is untenable and should be rejected. Any adjustment of salary or other benefits should not be made with retrospective effect from February 1951 but it should take effect only from the date of the award. If any adjustment under this award has to be made with retrospective effect the burden may upset the normal working of the company and throw its finances out of gear.
  - 43. On the above pleadings the following points arise for consideration:
    - (1) Whether in view of the award of Shri M. C. Shah as recently as April 1949 flxing scales of pay, allowances and other terms and conditions of service and in view of the fact that no special circumstances have arisen between April 1949 and February 1951 when fresh demands were made there is no warrant for fresh enquiry and the terms of the said award which is a long term award should not be disturbed except on special and extraordinary contingencies.
    - (2) Whether there should or should not be a uniform salary scale for employees both at the head office and those of the branches and whether uniform salary scales should not be prescribed for the reasons mentioned by the employers.
    - (3) (a) Is there justification for revision of salaries and if so what is the basic minimum salary that should be prescribed and what should be the scales of pay of the clerical staff and subordinate staff in the head office and in the branches.
    - (b) Whether efficiency bars should be removed and whether the maximum of the grade in each of the categories of employees should be reached in 18 years.
    - (4) Whether there should be a separate grade called Record Grade and if so what is the scale to be fixed and whether Peons should be promoted to the said grade.
    - (5) Whether the Dearness Allowance paid to the employees at present is not adequate and should be revised and should a portion of dearness allowance be absorbed in basic pay.
    - (6) Whether acting allowance should be paid as claimed by the employees.
    - (7) Whether the claim of the employees as regards the allowances for specialized type of work is justified and if so what allowance should be fixed.
    - (8) Whether allowances should be paid for operating machines such as Franking, Hollerith, Cromptmeter, Typewriter, and Adrema and whether Shri K. N. R. Pillai should be paid allowance from the date of his appointment till the date of his resignation.
    - (9) Whether allowances for assistants who handle cash and for Bank peons and delivery peons should be given. Whether overtime allowance should be paid.
    - (10) Whether the gratuity fixed by Shri M. C. Shah should be made applicable to branch and other employees and should it be made effective from 2nd February 1951 to all the employees including those who retired and died since 2nd February 1951.
    - (11) Whether the working hours at the head office should be revised and whether the working hours of the branches should be put on the same level as those in the head office.
    - (12) Whether the employees are entitled to leave facilities as claimed by them,
    - (13) Whether the company has failed to pay increment to certain employees as per Shri M. C. Shah's award and if so what relief should be given.

- (14) Whether there has been a breach of Shri Shah's award in regard to the confirmation of Sarvashri V. A. Kanahere, K. N. Vaidya and S. R. Sawardekar.
- (15) Whether the company gave discriminatory and favourite treatment to any and what employees with a view to make them anti-Union.
- (16) Whether the management should confirm all employees at the end of the sixth month of service.
- (17) Whether the period of service of employees under the Chief Agencies should be counted for the purpose of promotion, leave gratuity, pension, Provident Fund, etc.
- (18) Whether adjustments in salaries and Dearness Allowance should be made on point to point basis and with retrospective effect from the date of the charter of demands.
- (19) Whether any and what bonus is payable for the years 1948 to 1952 and if so on what conditions and whether additional bonus for the years 1948 to 1952 should not be granted for the reasons mentioned by the employers.
- (20) Whether the discharge of Shri Vichare is in contravention of Section 33 of the Industrial Disputes Act and whether Shri T. K. Vichare was discharged unjustifiably and whether he is entitled to reinstatement and/or compensation.
- 44. The enquiry into this dispute was held at Bombay. Since the enquiry could not be finished at the first sitting which was from 19th February 1954 to 25th February 1954, the enquiry was adjourned to the 22nd March 1954 and was concluded on 27th March 1954. Eight witnesses were examined for the employees and three witnesses were examined by the employers. Exhibits A to JJ were filed for the employees and Exhibits 1 to 20 were marked by the employers. At the enquiry the employers were represented by Shri B. Narayanaswamy. Advocate, and Shri D. H. Buch, General Secretary, represented the Employees Association.
- 45. Point No. (1).—It is not the contention of Shri Narayanaswamy for the employers that the previous award of Shri M. C. Shah operates as Res indicata and therefore the points of dispute in the present reference should not be enquired into. It is however his contention that most of the question referred having been dealt with in the previous award and the same having laid down a permanent scheme or decided a principle they are matters of long term planning and should not be disturbed unless change of circumstances are established by the employees. A number of authorities on the point have been cited and though it would be sufficient to refer to only three decisions of the Labour Appellate Tribunal which throw enough light on this matter, I would since the matter has been argued at length refer briefly to all the decisions cited before giving my finding. The earliest case which deals about this matter is one in Tinplate Company (India) Ltd. and their employees (reported in 1949 LLJ p. 392). It was observed in the case that "awards of Tribunals have the same force as any other award or decision and are binding and valid for all times in matters relating to personal rights as for instance victimization and that on other matters like wages, bonus, etc. the award continued to be valid until altered by consent or by fresh award and that it is not correct to interpret S. 15 of the Industrial Disputes Act to mean that an award will have validity only for the period for which it has been declared to be in force and at the end of the period the award loses its force and all issues are once again open for consideration without any change in the circumstances".
- 46. The next decision is in the Oil Companies in West Bengal-Vs-Their workmen (reported in 1950 II LLJ p. 571) and it was held therein that although an award may have been made effective as between the parties for a period of a year or less still the lapse of the period does not automatically entitle either party to the award to seek to vary the award except on proper grounds showing the change in circumstances necessitating or justifying a change in the terms laid down in an award. The next decision is in the Corporation of Calcutta and their employees (reported in 1950 II LLJ p. 788) by three members of the Industrial Tribunal. West Bengal. Subject to a minute of dissent by Shri P. R. Mukherjee, the Tribunal held that "it is the duty of the Tribunal to rectify errors, omissions, anomalies or elements of hardship in a prior award irrespective of any question of Res Judicata or the employees' failure to establish a change of circumstances. It will thus be seen that while in the first two decisions necessity for establishing change of circumstances was emphasized, in this decision it was held that it was not necessary to establish the change of circumstances in certain cases viz. to rectify errors, osimsions, anomalies or elements of hardship in a prior award.

- 47. Another decision cited is in Messrs. Parry & Co. Ltd.-Vs. Their workmen (1950 II LLJ p. 964) where it was held that the wage scales fixed by the major Engineering Tribunal was a general one applicable alike to a small as well as a big firm and the finances of the company warrant the payment of a higher wage scale and accordingly a suitable wage scale was laid down. Another case is in Messrs. Greaves Cotton & Co. Ltd. and their workmen (1950 II LLJ p. 1152) where the Tribunal held that there is nothing in the Indian Act to warrant the conclusion that an award once made will continue to be effective beyond the period for which it was so declared by the Government unless it was changed either by agreement between parties or by a new award made when definite change of circumstances is shown." It was also held that although the award may continue to be operative after the period by an agreement express or implied, it does not mean that the award as an award remains in operation or should be deemed for all purposes as continuing till altered by agreement or another award based on change of circumstances. It was however observed that it was a rule of prudence although not of law essential for the maintenance of some kind of continuity and respect for decisions of adjudicature and that unless for material change of circumstances or for some good or cogent reason prior decisions should not be disturbed. The same Tribunal held in Standard Vaccuum Oil Company, Bombay Vs. Their workmen (1951 I LLJ p. 50) that proof of material change of circumstances was not necessary to review the scales laid down on a prior award.
- 48. The next decision is of a full bench of the Labour Appellate Tribunal in the Sugar Mills of Bihar and their workmen (1951 I LLJ p. 469). Having considered the decisions of other Tribunals on the matter it was held that a prior award can and ought to be reconsidered in a latter award made on a new reference if there are mistakes, anomalies, errors, in a prior award or other grounds are established which could be regarded as good grounds for reconsideration of a judgment pronounced by a civil court. This decision recognises the principle that it is not necessary to establish change of circumstances but that it would be sufficient to show that there are good grounds for a reconsideration of the matter. The next decision is of a Bench of the Labour Appellate Tribunal in Army Navy Stores Ltd., Bombay-Vs-Their workmen (1951 LLJ p. 31). It was held that basic wages once fixed should stand for a reasonable period of time unless some substantial change intervenes. Though this decision was given more than a month after the Full Bench decision referred to above no reference is made in it to the Full Bench decision. It may however be pointed out that in that case the presentation of fresh claims by the employees was made within 11 months after the making of the previous award by Shri Devetia. The learned Appellate Tribunal made it clear that they should not be deemed to be doing more than determining the position of the parties as on the date when the fresh claims were made." The next decision is in the case of Ford Motor Co. Ltd. and Their workmen (1951 II LLJ p. 231) in which a Bench of the Labour Appellate Tribunal held that where an award has been made between the parties the award should be tried for a sufficiently long period before any changes can be effected in the terms thereof. It is rather unfortunate that though this decision was made on the 3rd July 1951 no reference is made in it to the earlier decision of the Iull Bench of the Labour Appellate Tribunal which was given on 7th March 1951. It may also be po
- 49. In Caltex India Ltd.-Vs-Their workmen (reported in 1951 II LLJ p. 543) the learned Tribunal of Bombay held following the full bench decision in 1951 I LLJ p. 469 that it was open to the workmen to agitate for change in terms of a prior award between the parties without showing change of circumstances. In Mill Mazdoor Sabha, Bombay and Silk & Art Silk Mills Association, Bombay, 1951 (II) LLJ. 552 the Industrial Court Bombay, pointing out the difficulty of reconciling the views expressed in 1951 I LLJ p. 469 and 1951 II LLJ p. 231 held that the fact that the workmen were dissatisfied by the prior award, the continuance of which may incite industrial unrest was a sufficient reason to re-open a prior award on the same subject matter between the same parties. The decision in Caltex India Ltd.-Vs.-Their workmen above referred to was confirmed by the Labour Appellate Tribunal as reported in 1952 II LLJ p. 51. There is only one other decision which remains to be considered i.e. one in Kanpur Tannery Ltd. and Shri Mohamedeya and others (1952 II LLJ p. 423) in which it was held by the Lucknow Bench of the Labour Appellate Tribunal that the object underlying the doctrine of Res Judicata is to prevent multiplicity of proceedings and although section 11 of the C.P.C. will be inapplicable in terms the principles embodied therein would be fully applicable." It may however be stated that

this is not a case of wages or Dearness Allowance but one relating to retrenchment of four workmen and it would not certainly be open for the Union or the wrokers to object to retrenchment on one ground in one case and hold up the other grounds to be made use of in future proceedings. This case has therefore no bearing on the facts of the present case.

- 50. On a resume of the authorities I feel I am bound by the Full Bench decision in the dispute between Sugar Mills of Bihar and Their workmen and I find that if good grounds exist for reconsideration of the award of Shri M. C. Shah with regard to any of the points that have been referred, it will be open for me to reconsider the previous award and grant such relief as the workmen may be entitled to even though change of circumstances since the passing of the previous award are not established.
- 51. Points Nos. (2), (3-a), (3-b) and (4) Scales of Basic Salary.—The Bombay Life Assurance Co. Ltd., Bombay does business in Life Insurance and was incorporated in the year 1908. It has its head office in Bombay and has 29 branches both in the Bombay State and outside. The Bombay Life Employees Association which was originally started in February 1942 is said to have become practically defunct as a result of the hostile attitute adopted by the management. It was subsequently revived on the 3rd August 1946 with Shri R. S. Nimbkar (since deceased) as its President. There was a Charter of Demands by the association on 19th August 1946 and since the demands were not satisfied a notice of strike was given on the 1st December 1946 and in pursuance thereof the employees. did commence their strike on the 16th December 1946. The strike continued till the 26th February 1947 when it was called off. Finally a reference for adjudication was made on the 13th September 1947 to the Industrial Tribunal consisting of Shri D. V. Vyas and subsequently of Shri M. C. Shah who delivered his award on the 19th March 1949. The Employees' Association demanded salary scale of Rs. 80—10—180—15—405—E.B.—20—605 and graduates and stenographers were asked to be started with Rs. 20 more in the said scale. After elaborately discussing the points that were urged before him Shri M. C. Shah fixed the salary scales of the clerical staff at Rs. 75—5—105—E.B.—6—135—8—175—10—215—E.B.—12½—240—15—285, the maximum being reached at the end of 25 years of service. As regards the subordinate staff the Employees Association asked for a salary scale of Rs. 40—3—70—4—110 and further scale for Jemadars viz. Rs. 110—5—150 and the Tribunal fixed scales at Rs. 30—2—60 to the Peons and watchmen, the scale of Rs. 30—1—45 to the sweeper and a scale of Rs. 42—2—64 to the liftman. The head peon was given a scale of Rs. 35—2—64 to the
- 52. Within two years after the award of Shri M. C. Shah a fresh charter of demands was sent on the 2nd February 1951. The scales demanded for clerks or Assistants are Rs. 100—10—180—15—270—20—350 in 18 years without any efficiency bar. This scale is claimed for clerks in head office, branches as well as in Chief Agency offices. The scales demanded four Peons, Liftmen, Watchmen and Sweepers are Rs. 50—3—104 in 18 years without any efficiency bar. A new grade called Record Grade is also asked to be formed having scale of Rs. 60—5—150 in 18 years without any efficiency bar to which Peons who have five years of service and who have passed 5th standard should be promoted. It may be stated at this stage that Shri M. C. Shah's award fixing the scales of salaries is only in respect of employees in the 29 branches in which the number of employees is about 113. It is fairly clear from the evidence that the clerks or Assistants in branch offices have not got any fixed scales of pay and that there are clerks who are started on a minimum salary of even Rs. 25. In other Insurance Companies such as 'Oriental' in respect of whose employees there are two awards one of Shri M. C. Shah and the other of Shri S. P. Varma, there are scales fixed for the employees in the branches. There is no reason why scales should not be fixed for the employees at the branches of the Bombay Life Assurance Company.
- 53. Before dealing with the question as to whether there should be uniform scales for the employees at the head office and the branches I shall deal with the question as to whether there are good grounds for altering the scales which were fixed by Shri M. C. Shah for the employees at the head office in the year 1949 and whether the Employees' Association has succeeded in making out a case for disturbing the scales of pay which were fixed under the award.
- 54. One reason that is urged for the revision is that the award of 1949 was made in respect of demands submitted in August 1946 and during the pendancy of the reference, the 1946 standard of living changed as also the standards of fixation of pay. But there can be no doubt that Shri M. C. Shah when he gave the award in the dispute between the Oriental Government Security Life Assurance Company and their workmen in January 1949 and when he gave the award in the dispute between the Bombay Life Assurance Company Ltd. and its

workmen in March 1949 did take into consideration the standard of living in 1949 as well as the standards of fixation of pay which were current at that time. The only point now urged is that Shri Subramanian's Statistical Enquiry in the middle class standard of living has revealed a new basis for assessment. But much criticism has been levelled against the method adopted by Shri Subramanian as well as the utility of the report in fixing salaries of middle class employees. These criticisms have been noted and dealt with in paragraphs 199 to 203 of Sastry award and it is seen from the observations therein that the report of Shri Subramanian cannot be considered to be of much help in arriving at a proper conclusion regarding the economic condition and modes of living of Bank workmen. A reference is also made in Sastry-award about Labour Appellate Tribunal's hesitation to accept Shri Subramanian's report as of great value on the points which are relevant for fixation of scales of pay. In Caltex (India) Ltd. Vs. Their employees (1952 II LLJ. p. 183) the Labour Appellate Tribunal has endorsed the general view that the minimum wage should be fixed with reference to a standard family of a worker consisting of his wife and two children making in all three consumption units. There is therefore no justification for adopting the new basis for assessment as disclosed in Shri Subramanian's report. Shri M. C. Shah in his award has stated that he has amply dealt with the question of the inadequacy of the starting salary being fixed at Rs. 65 in his award in the dispute between the Oriental Government Security Life Assurance Company -Vs- its employees. No doubt when a demand is made which falls for below the living wage standard, consideration of the company's capacity to pay should not be allowed to be brought in. But the question to be considered will be as to whether the minimum wage of Rs. 75 which is fixed in Shri M. C. Shah's award is so much below the living wage standard that it should be revised so far as fixation of s

55. In considering the question of capacity to pay Shri M. C. Shah observed that it was vital to remember the nature of the business which the company is carrying on. The difference between an insurance company and industrial concern has been well brought out in the following remarks of Shri M. C. Shah in paragraph 11 of his award in the Oriental Government Security Life Assurance Company's case:

"It is not a manufacturing or industrial concern which derives its profits from goods manufactured and sold to the public at rates which might vary and might even be raised from time to time having regard to the cost of production, the cost of establishment, etc. For the manufacturer and the industrialist there is a scope of maintaining his profit and even to step them up. The employer here is a company doing life assurance business and its principal and the most vital source of income is the interest it is able to earn from its premium receipts and funds."

I fully concur with these observations and the term capacity to pay with reference to insurance companies will have to be considered with due regard to this difference in the nature of business. It is then pointed out on behalf of the employees that the company has been in a very sound financial position from every point of view and has been making enormous profits during the past 45 years and also that the company's business has been increasing from year to year. The reports and accounts for the years 1947 to 1952 as well as the Valuation Reports for five years ending 31st December 1951 have been produced and marked as Ex. 8 (scries). It is seen from these reports that so far as new business is concerned it increased by 42 per cent. over the new business of the previous quinquennium. It is also seen that the income from the premiums and interest less income tax deducted at source also recorded a gradual increase. While in 1942 to 1946 the net premium income was Rs. 2,84,99,193 and net interest income was Rs. 4,69,630 making a total of Rs. 3,26,68,823. The net premium income for 1947 to 1951 was Rs. 4,76,77,453 and net interest income was Rs. 72,10,438 making a total of Rs. 5,48,87,891. The increases in the net premium income and the net interest income are 67 per cent. and 73 per cent. respectively. It is also observed in the Valuation Report (Ex. 8-g) that the mortality experience of the company continued to be satisfactory and the increase in maturity claims is a source of satisfaction to all concerned. So far as interest yield per cent. is concerned there has been progressive increase except during the year 1949. It is also observed that to earn a higher yield consistent with safety, the company has started granting loans on first class mortgages of property. The increase of life assurance fund during the quinquennium ending 31st December 1951 was Rs. 2,34,90,427 as compared to Rs. 1,63,45,774 during the previous quinquennium and it is observed that the increase would have been still more but for Rs. 40,24,

56. As regards the renewal expense ratio during the five years during 1947 to 1951 it had been 51·11, 16·01, 15·42, 15·93 and 14·89 per cent. respectively. Though the expense ratios were rather high there has been a downward trend from 1950 to 1951. The total profits arisen during the quinquennium amounted to Rs. 42.76,493. Shri K. Balasubramanian, the Manager and Actuary states that what is mentioned as profit is really not profit but only the surplus. Adopting the term surplus it is seen that the surplus of Rs. 42 lacs and odd is very little when compared to the surplus of Rs. 3 crores, 33 lacs and odd of the Oriental Government Security Life Assurance Company. The renewal expense ratio for the Oriental Government Security Life Assurance for 1947, 1948 and 1949 is 12, 14 and 14 per cent. respectively as compared to 15, 16 and 15 per cent. respectively of Bombay Life Assurance Company. It is thus seen that the renewal expense ratio for the Bombay Life Assurance Company has been 1 to 2 per cent. more than in the case of the Oriental Government Security Life Assurance Company. Shri Buch, who appears for the employees, has tried to show that the renewal expense ratio and has filed Ex. U showing that the renewal expense ratio will be only 11·17 and the figures given by the employers are based upon certain assumptions as regards the first year's expense ratio. The Manager and Actuary examined as EW-3 states that the expense ratio in 1951 was 14·89 and in 1952 was 14·96 and that it is not true that these expense ratios are apparent renewal expense ratio and not the real expense ratio. He adds that it is based on the method of calculation prescribed in the Insurance Act and the Rules and it is not true that from the revenue account of the company for 1951 and 1952 the actual expense ratio would be 11·17. He refers to the expense ratio given in the Year Book by the Insurance Department on the basis of their own calculations. According to him it is impossible to work out these ratios without assumptions. He states that

57. No doubt there is difference between the investments that are permissible in this company and the investments that could be made in the Oriental Govt. Security Life Assurance Company. In the 'Oriental' under the trust deed, dated 29th March 1882, 80 per cent. of all the gross premium received during each year less such portions as may have been applied in payment of re-assurance premiums, loans on policies, surrender values and claims for that year has to be handed over to the official trustee of Bombay and invested in Government securities only and held on trust for the benefit of the policy holders as specified in the said trust deed. Therefore, from the beginning the prosperity of the Government of India. But in the case of the Bombay Life Assurance Company their investment is fettered only by Sections 27 and 27-A of the Act under which 25 per cent. of the premiums have to be invested in Government securities, 25 per cent. in approved securities, 35 per cent. in approved investments and 15 per cent. can be invested according to the discretion of the management. It is pointed out on behalf of the employees that by judicious investments the employers could get a return of 4 per cent. interest. The company has filed a statement of interest yield during the years 1932 to 1952 as an Appendix to the written statement. From this it is seen that the interest yield prior to 1941 was more than 4 per cent. but that subsequently there has been a fall. In 1952 the interest yield was 3 48 per cent. The yield has not gone below 3 per cent. except in the year 1949 when it went down to 2 96 per cent. The Oriental Government Security Life Assurance Company is a very old concern having been established in 1874 and the Bombay Life Assurance Company is comparatively of recent origin having been established in 1908. There is no comparison between the two companies either in the volume of business or in the premium income or even in the surplus at the end of the year.

58. There are also two or three other circumstances mentioned by the Employers in support of the position that the salary scales should not be increased. It is pointed out that much of the business in force on the books of the Company written during the past decade could not be particularly considered as remunerative inasmuch as the new rates as a result of the revision of premium tables in 1947 were higher than the old rates by about 10 per cent. It is however seen

that the company has very recently revised and reduced the premium rates in all its plan of assurances and brought them in force from 12th April 1954. The next point that is urged is that the company has been forced to progressively reduce the quantum of bonus from 1934 onwards in regard to their with profits policies and that in some years no bonus was even declared. It is also pointed out that the increase in prosperity of the company is due only to the combined effort of the vast field organisation directed and controlled by the officers of the head office and not due to any contribution made by the salaried employees at the head office and the branches. It is no doubt true that the prosperity of an insurance company will depend upon mostly on the effort made by the field organisation guided by the officers of the head office but it cannot be said that the clerical establishment do not contribute anything at all towards this prosperity. In fact the management said that the contributions of the salaried employees is comparatively light and less important. If therefore the prosperity of the company is at least to some extent due to the contribution made by the clerical establishment there is no reason why they should not claim that they should be better remunerated for the work which is at least in some measure responsible for the prosperity of the company. The observations in the Planning Commission's Report that increase in wages should be avoided except to remove anomalies or when the existing rates are abnormally low will have to be kept in view in considering the question of increasing the existing scales of salaries.

59. Considering therefore all the circumstances above set forth I feel that there would be no justification for granting to the employees of this company more liberal scales of basic pay than those that are obtaining in the Oriental Government Security Life Assurance Company. The scales of this latter company in Bombay are:

Record Grade: Rs. 50—3—74—E.B.—3—80—5—120. Junior Grade: Rs. 75—5—105—E.B.—6—135—7—170—E.B.—8—210. Senior Grade: Rs. 120—8—160—10—220—E.B.—12½—245—15—275.

In the Bombay Life Assurance Company there is no Record Grade and there are no separate grades of Junior Grade and Senior Grade. Both the employers and employees pressed before the previous adjudicator Shri M. C. Shah the desire to have one composite scale for the clerical employees and consequently the scale was fixed at Rs. 75—5—105—E.B.—6—135—8—175—10—215—E.B.—121—240—15—285. In the Oriental Govt. Security Life Assurance Company Junior Grade clerks started with Rs. 75 and the maximum of a Senior Grade clerk was fixed at Rs. 275 by Shri M. C. Shah. When the matter relating to the revision of scales of pay for the head office employees in the Oriental Life Assurance Company came up before Shri S. P. Varma, Central Government Industrial Tribunal, Dhanbad, he considered that the scales existing were adequate and need not be increased. He made however some slight alterations by shifting the position of the efficiency bar. The scales of pay obtaining in the Bombay Life appear to be slightly higher than the scales in the Oriental Life Assurance Company and the increase is found to come in after a service of 11 years. I see therefore no reason to alter the existing scales of pay in Bombay Life Assurance Company. As the maximum salary in the said scales would be reached at the end of 25 years of service and as an Assistant will have some more years of service, I will step up the maximum to Rs. 330 by having six annual increments of Rs. 15 each instead of three increments which they are having at present.

60. The next question is about introducing a Record Grade. The Association claims this grade for the benefit of Peons who have put in 5 years of service who are to some extent literate and who can do minor duties which a clerk is expected to do. It is stated that there are some peons who can attend to the work which ordinarily a clerk can attend such as arranging cards according to policy department, taking out folios from the finders regarding lapse, death, maturity claims and surrender value. One Sriranga S. Palav, a peon of the office has been examined as WW-7 and has given evidence about his doing such work in the Filling Department, in the Renewal Department and also in the Loans Department. He also speaks to the work done by other Peons. WW-7 has passed only the fifth standard in English. Shri S. G. Subramanian, the Assistant Actuary, who has been examined as EW-1 states in his evidence that the work attended to by the Peons is of a very routine nature and could be easily attended to by a person who is not well educated as the particulars are written in big bold letters but what is claimed is not that the Peons should be promoted to a clerical grade but that a separate grade called Record Grade with lower scale should be created so that the Peons who are doing minor duties of a clerk such as those mentioned above might get promoted to it. There is a grade called Record Grade in the 'Oriental' both in the Head Office and in the Branches. The management has not given any weighty reasons for not having a grade like

this in their office. I would therefore direct that a Record Grade be created in the Bombay Life Assurance Company on the same scales as are found in the Oriental Government Security Life Assurance Company, namely, Rs. 50—3—74—E.B.—3—80—5—120. This scale will apply to the head office. I would fix the scale for the Record Grade in Branches after considering the question raised by the Employees Association, as regards fixing of scales in Branches.

- 61. There are no fixed scales at present in the Branches. The necessity for having a fixed scale of salaries for the employees of the branches cannot be denied. The claim of the employees association is that the Assistants in the Branches should be paid the same scales as are paid to the Assistants in the Head Office. Such a claim was put forward before Shri S. P. Varma in the dispute between the Oriental Government Security Life Assurance Company and their workmen and was negatived. The Employees Association has filed affidavits marked Exs. GG, HH and JJ about employees in Rajkot Branch, Delhi and Punjab Branch and Cuttack Branch. An attempt has been made to show that the duties of the Assistants in these Branches are as onerous and important as those of the Assistants in the Head Office. But the evidence of Shri Despande those of the Assistants in the Head Office. But the evidence of Shri Despande examined as WW-8 and the evidence adduced on behalf of the management go to show that the work that is being done in the Branches cannot be as important or complicated as the work done in the Head Office. It therefore follows that some difference should be maintained between the scales obtaining in the head office and those that have to be prescribed for the Assistants working in the head office and those that have to be prescribed for the Assistants working in the Branches. The Scales that are now obtaining in the Branches of the 'Oriental' may very well be adopted with some suitable adjustments in view of the fact that there is only one grade instead of a Junior and Senior Grade as in the 'Oriental'. I would therefore fix the scales of the Assistants in the Branches at Rs. 60—4—80—E.B.—5—105—7—140—8—180—E.B.—10—210—12—270.
- 62. There will be a Record Grade even in the Branches and the scales will be 62. There will be a Record Grade even in the Branches and the scales will be the same as in the Oriental Government Security Life Assurance Company, viz. Rs. 45—2—59—3—80—5—90. As regards promotion for peons to the Record Grade the management will hold an examination as is done in the case of the Oriental Government Security Life Assurance Company and promote only such Peons who are qualified to be promoted to that grade. As regards the educational qualifications they must have studied at least up to the seventh standard English. For the reasons given by Shri M. C. Shah in his award in the 'Oriental' dispute it is desirable that there should be an efficiency bar for ensuring due diligence and an incentive for work. The efficiency bars will therefore remain and the contention of the Employees Association as regards the efficiency bar and as regards tention of the Employees Association as regards the efficiency bar and as regards maximum being reached in 18 years service are therefore negatived in the case of the clerical grade.
- 63. So far as subordinate staff consisting of Peons, Sweeper and Liftman in the head office is concerned the scales now existing are adequate and do not require revision. The salary for the subordinate staff in the branches will be the same as in the head office.
- 64. Point No. (5): Dearness Allowance.—The Association claim the following scales of Dearness Allowance:

.. <u>Rs.</u> 80 Salary Rs. 101—200 Salary Rs. 201—350 Rs. 70 plus 10 per cent. of salary.
Rs. 75 plus 5 per cent. of salary.

As regards the subordinate staff a fixed sum of Rs. 70 is claimed. Under the award of Shri M. C. Shah, the scales of Dearness Allowance which are now in force are as follows:

Salary up to Rs. 100 Salary Rs. 101—200 Salary Rs. 201—350 Rs. 40 . . . . Rs. 31 plus 10 per cent. of salary.
Rs. 35 plus 10 per cent. of salary. . .

The subordinate staff is paid a Dearness Allowance of Rs. 30 per month. A separate scale is fixed for Branches namely:

Rs. 35/-.
Rs. 35/- plus allowance of Re. 1/- for every excess salary of Rs. 8/- or part thereof subject to a maximum of Rs. 45/-. Up to Rs. 100/-Over Rs. 100/-

For the subordinate staff for the Branches a sum of Rs. 25 per month is fixed.

65. The reason for claiming an increase in Dearness Allowance is that the cost of living for working class has risen from an average of 279 points in 1947 to 360 points in 1953. There is no doubt that there has been increase in the cost of living since the award of Shri M. C. Shah. By a reference to the Working Class Cost of Living and Food Index numbers in India as disclosed in the Indian Labour Gazette issue of March 1954, it is seen that in Bombay taking the original base at 100 in August 1939, the index number in 1947 was 265, and in 1949 it was 292. It increased to 298 in 1950, 314 in 1951, 321 in 1952, 346 in 1953 and while it still further increased to 358 in August 1953, it came down to 346 in January 1954. The Working Class Cost of Living Index with base at 100 points in 1944 which is the basis that is referred to in the written statement of the Employers as shown in the Indian Labour Gazette for Delhi is 122 in 1947, 132 in 1949 and it rose to 142 in 1951 and 143 in 1952 but fell down to 140 in 1953 and came down to 139 in January 1954 though it went up in the meanwhile in September 1953 to as high a figure as 145. The contention of the management that there is only a slight increase over index figures of 1949 is not correct. The Dearness Allowance that was fixed in the award of Shri M. C. Shah in the Oriental Government Security Life Assurance Company dispute is as follows:

 Salary upto Rs. 50/- (inclusive)
 Rs. 35/ 

 Salary Rs. 51—100
 Rs. 40/ 

 Salary Rs. 101—175
 Rs. 31/- plus 10% of salary.

 Salary Rs. 176-325
 Rs. 35/- plus 10% of salary.

 Salary Rs. 326 and over
 Rs. 36/- plus 10% of salary.

- 66. A comparison of these scales with those given in the award relating to the dispute in Bombay Life Assurance Company will show that there is not much difference. When the demands of the Oriental Government Security Life Assurance Company came before Shri S. P. Varma an increase of Dearness Allowance by Rs. 5 was given in view of the voluntary offer made by the Company. When Shri M. C. Shah fixed the scales of Dearness Allowance payable to the employees of the 'Oriental' and 'Bombay Life', he did not link the Dearness Allowance to the rise in the cost of living index number because he found that the method adopted by the Company was on the whole beneficial to the employees. But it cannot be denied that when the cost of living increases the employees are entitled to increased Dearness Allowance proportionate to the increase in the cost of living. Over and above the sum of Rs. 5 which the Oriental Government Security Life Assurance Company paid and which was incorporated in the award by Shri S. P. Varma, the Oriental Government Security Life Assurance Company appears to have given a further increase of Rs. 5 to the employees subsequent to the award. There is no reason why the employees in the Bombay Life Assurance Company should not be paid the same scales of Dearness Allowance which the employees of the 'oriental' are getting from their Employers. It is therefore just and proper that the Dearness Allowance to the employees should be increased by Rs. 10 per month in the case of every employee both clerical and subordinate staff whether in the Head Office or in the branches and that this addition should be made to the Dearness Allowance that is already being paid. By this addition it will be found that there will be still some difference between the Dearness Allowance drawn by a Branch office employee. The enhanced Dearness Allowance will be paid with effect from the 1st January 1952.
- 67. As regards the claim of the employees that a portion of the Dearness Allowance should be absorbed in the basic salary, apart from the fact that this question has not been specifically referred to this Tribunal, I do not see sufficient justification to grant the request as in other insurance companies the salary scales remain unaltered and it will result in imposing additional burden upon the Employers in this Company if they are asked to absorb a portion of the Dearness Allowance in the basic salary. I therefore decline to grant this demand to the employees. I also decline to grant the demand that full Dearness Allowance should be paid to an employee on leave on half pay or loss of pay.
- 68. Points Nos. (6), (7), (8) and (9): Acting allowance.—The employees claim acting allowance of Rs. 30 for an Assistant who acts in the place of a departmental head at the Head Office and @ Rs. 40 and Rs. 25 respectively for an Assistant who acts in the place of a Branch Manager or an Assistant Cashier who acts for a Cashier or Branch Manager. This matter has been dealt with by Shri M. C. Shah in his award and he has allowed an acting allowance of Rs. 15 per month for acting for 15 days or more. Sufficient reasons have not been given as to why these directions should be altered. The previous award of Shri M. C. Shah related only to the Head

Office employees. The direction regarding acting allowance made in the previous award should also be made applicable to the Assistants or Assistant Cashier who acts in the branches for the Branch Manager or the Cashier. A Peon who acts in the place of a Havildar or a Peon who acts in the place of a Liftman should be given allowance of Rs. 7 per month. As regards allowance to the Assistant who handles cash I agree with the observations of Shri M. C. Shah in the Oriental Government Security Life Assurance award that these clerks are receiving and paying out cash in the building itself and not being required to leave the premises and therefore they are not entitled to any special allowance. He has allowed a sum of Rs. 3 per day to clerks who disburse the staff salary during the days when they attend to such work. The same allowance will be given in this Company also for the clerks who disburse the staff salary. I do not think any allowance need be given to Bank Peons or to service or delivery Peons.

- 69. Overtime Allowance.—So far as overtime allowance is concerned it is a matter which is not one of the points referred to me for adjudication and I do not think I can deal with it as it is outside the scope of reference. Overtime Allowance has been disallowed by Shri S. P. Varma in his award in the Oriental Government Security Life Assurance Case. I do not think that different considerations ought to prevail in the case of this Company. The overtime allowance for working on holidays is quite fair and will continue.
- 70. Special Allowances.—So far as graduates are concerned Shri Shah has allowed them to draw an increased initial salary. The claim for increase of salary in the case of an employee who graduates while in service is unreasonable and cannot be granted. Stenographers have been also given higher salary to start with. The demand made for an assumption of three years in the case of holders of Government Diploma in accountancy etc. is rejected. I do not think any further directions are necessary as regards allowance to persons doing specialised type of work.
- 71. Machine Allowance.—As regards employees operating upon machines a sum of Rs. 10 is being paid only to the workman in the Adrema Department. In the 'Oriental' award allowance is being given even for persons operating other machines such as Comptometer and Hollerith. A Comptist machine allowance of Rs. 15 per month was allowed in the award in Firestone Tyre & Rubber Company of India Ltd., Bombay and workmen (office staff) (1950 I.C.R. p. 481 at p. 499). An allowance of Rs. 10 per month to Comptists was allowed in the award in Surat Electricity Company Vs. Surat Electricity Company's Staff Union (1950 I.C.R., p. 641 at p. 648). An allowance of Rs. 10 per month was allowed to Typists in the award in Elephant Oil Ltd. Vs. Their workmen (1949 I.C.R., p. 1060 at 1088). I therefore direct that employees operating machines such as Hollerith, Comptometer, and Typewriter should be given an allowance of Rs. 10 per mensem. Work on Franking or Punching machines is not arduous and employees operating these machines will not be allowed any allowance. Shri K.N. R. Pillai will not therefore be given any relief.
- 72. Points Nos. 10 to 14: Gratuity.—The Association claims that gratuity should be given as per Demand No. 12 and should be made applicable to Branches and other employees. The association has also filed a statement (Ex. Y) showing four sets of gratuity schemes awarded by Industrial Courts; but comparing the scales of gratuity fixed by Shri M. C. Shah in the previous award with the scales as laid down in his award in the Oriental Government Security Life Assurance Company, it is found that the scales fixed in the Bombay Life Assurance Company are more liberal and favourable to the employees. A demand made before Shri S. P. Varma for a reconsideration of the scheme for the Oriental Life Assurance Company was rejected by him. The claim that gratuity should be paid on voluntary retirement or resignation even after two years of service appears to be unreasonable and could not be granted. The claims that the amount of gratuity should be calculated on the basis of the total earnings of the employees cannot also be allowed. I am however unwilling that the scheme of gratuity which the employees are now having should be curtailed to any extent so as to bring it on a par with the scheme given under the 'Oriental' award. The claim that gratuity benefit should be given to all the employees of the Company's Branch offices is quite reasonable as there is no reason why any difference should be made in this regard between the head office employees and the Branch office employees. The contention of the employers that the scheme to be adopted for the Branch offices should have effect only from the date of award does not appear to be reasonable as there is no reason why the employees who have been all along denied benefits of should not get them at least from the time the demand is made by the Association. The gratuity benefit will there be given also for all those who retired subsequent to the 2nd February 1951 or to the heirs of those who died subsequent to the 2nd February 1951.

73. Working hours.—The claim of the Association for lessening the working hours at the head office does not come with good grace from the employees. While clamouring for higher emoluments the employees should not refuse to do adequate work. The working hours were fixed under the award of Shri M. C. Shah as a result of an agreement between the parties and the total working hours at present obtaining are 35¼ hours for clerical staff and 45 hours for peons. They are in no way unfair or unreasonable and no case has been made out for reducing the same. The working hours which are obtaining at present are therefore allowed to stand.

74. Leave facilities.—Then turning to the leave privileges it is stated by the Company that the leave rules now in force are very liberal and on the whole compare favourably with the leave rules obtaining in most of the life insurance companies. But so far as Casual Leave is concerned it is found that the employees in the Oriental Government Security Life Assurance Company are allowed 15 days Casual Leave in a year of which six days could be taken at one time. This fact is not mentioned in the Company's written statement though a reference is made to the fact that a demand for 20 days was rejected by Shri M. C. Shah and by Shri S. P. Varma. I am therefore of the opinion that the employees of this company should also be given Casual Leave for 15 days in a year and be allowed to avail six days Casual Leave at a time. Of course holidays and Sundays will not be combined with leave but might be allowed to be prefixed or affixed. The Company contends that privilege leave for more than 30 days need not be granted as of right. Granting of leave would no doubt depend upon the exigencies of work at the time but the management should not refuse to grant reasonable requests for privilege leave on the ground of exigencies of work.

75. Non-payment of increments to certain employees.—A complaint has been made by the Association that the Company has failed to pay increments to certain employees as per Shri M. C. Shah's award of 1949. Exs. CC is the statement filed by the Association regarding the employees who have not been granted increments. As regards this statement the management has stated in Ex. 24 that the date of joining in respect of Sarvashri S. G. Musale, J. Miranda, R. G. Deshmankar, K. B. Israni, D. D'souza, K. S. Ramaswamy, K. N. Vaidya, V. A. Kanahare, S. A. Mundker, K. K. Mathews and I. D. Almeida are not correct, and the date of confirmation in respect of Sarvashri K. B. Israni, M. P. Krishnamurthy, K. S. Ramaswamy, S. R. Sarvadeksi, K. N. Vaidya and V. N. Kanhare are not correct. In answer to this the Association has stated that salaries as on the 31st December 1953 are taken out from pay sheets given by the management to the Union and hence they are correct. As regards the joining dates it is rightly pointed out that the Company has not specifically stated the correct joining dates. It is not enough for the Company to merely state that the date of joining is not correct. It would have been more helpful if the correct dates of joining had been mentioned. The management appears to have been of the impression that increments should be granted only after confirmation. Shri Narayanswamy, the learned advocate for the company, however admits that this view is wrong and that in view of the award of Shri M. C. Shah increments ought to have been given from the commencement. I therefore find that the claim of the Association generally is well founded and that in all cases in which, increments have been denied the employees should be given the increments as per award. Necessary adjustments and payment of arrears should be made.

76. Confirmation of certain employees.—The complaint of the Union is that the company did not treat Sarvashri V. A. Kanahere, K. N. Vaidya and S. R. Sawardekar as confirmed employees with effect from 1st January 1947 and thereby deprived them of their two annual increments. As regards these three workmen they were temporary employees and were among those who went on strike. They were taken back to service on 27th February 1947 and the question arose as to whether they should be retained in service in case the old employees were to be reinstated under the award of Shri M. C. Shah. In paragraph 15 of his award Shri M. C. Shah observed that these three persons had received sufficient penalty in that they were continued as temporary hands till then and they should be confirmed. The arbitrator directed that the said three persons should not be discharged. The contention of the company is that the award merely recommend for confirmation of these three employees and that there is no substance in the plea that these persons should have been confirmed with effect from 1-1-47, but the award directs in paragraph 24 that the salary scales and the allowances including the increase in the existing allowances should take effect from 1-1-47 and there is no reason why the said direction should not be given effect to even with reference to these employees. But the claim of the Association for two increments cannot be sustained as they admit in the statement filed by them in answer to several statements filed by the employers that with regard to the

salaries of these abovementioned three employees as given by the employers is correct and that the mistake committed by the Association was regretted. These three employees should therefore be made permanent if not already made and they should be paid the increment that is due to them as per the award of Shri M. C. Shah.

- 77. Points Nos. (15), (17) and (18) Discriminatory Treatment to certain Employees.—The charge made by the Association that the company gave discriminatory and favourite treatment to some of its employees with a view to make them anti-Union does appear to have some force. It is admitted that the company did maintain three pay sheets till very recently. There was a pay sheet separately for the strikers, there was another pay sheet for new entrants i.e., for those who were employed subsequent to the strike. There was a third pay sheet for persons who did not go on strike. In Ex. 11 filed by the company the names of persons who were given additional increments are to be found. The Association has filed a list of names of employees who got special increaments in 1953 and 1954. The company has filed Ex. 26 pointing out certain discrepancies in the list. In answer to this the Association points out that Sarvashri S. G. Subramaniam, R. B. Cardmaster, S. M. Mutivale, A. T. Kamath, K. N. Iyer and K. G. Ghode have exceeded the maximum laid down in Shri M. C. Shah's award and hence increases given to them are special increases. With reference to Sarvashri S. Subramaniam, R. R. Trivedi, V. A. Vedantham, R. Balaraman, R. Jairaman, S. R. Thakur, K. N. Hegde, T. R. Virraghavan and K. S. Bishwanathan it is stated that special increases must be deemed to have been given even though increases as such might not have been granted in 1953. A reference to Exhibits EE, 11 and the pay sheets marked as Ex. FF shows that the special increments were granted mostly to the persons whose names are entered in the pay sheet No. 1 and so far as persons who are included in pay sheet No. 3 are concerned except in the case of a solitary instance of Shri J. N. Mehta no one else has been given any special increments. The Manager in his evidence has stated that these special increments have been given with a view to maintain the efficiency of the office and to reduce the expense ratio. He however admits that no record is kept about the efficiency of
- 78. Confirmation of employees.—I shall next deal with the demand of the Association that the management should confirm all employees at the end of the sixth month of service. The remarks made by Shri M. C. Shah in his award in the 'Oriental' company's dispute on the question of confirming temporary employees are very instructive. He states—
  - "If these men (temporary employees) are recruited as temporary hands it will not be proper to compel the company to make them permanent and thereby increase the overall strength of the company's staff but where the normal strength of the company's staff requires to be increased and men are taken for that purpose as temporary hands then it is fair that they should not be made to wait indefinitely for confirmation. In such cases the company should confirm them at the end of the sixth month or should intimate to them at the end of sixth month that they have no chance to become permanent so that they might if they so desire seek employment elsewhere and not stay in the hope of confirmation. My award on this demand will therefore be on the above terms."
- 79. The complaint made by the Association is that the management keep employees on temporary basis for over three years without any annual increments and that thereby the employees are deprived of Provident Fund, Gratuity and other benefits. Their demand is that the management should confirm all employees at the end of the sixth month or else terminate their services once and for ever. This is in accordance with the observations of Shri M. C. Shah above referred to and there is no reason why the management should not adopt

the directions of Shri M. C. Shah. I therefore direct that all temporary employees unless they have been specifically recruited as temporary hands for doing work of a temporary nature should be confirmed at the end of six months.

- 80. Continuance of the period of service of employees under the chief agencies.—On the question of counting the period of scrvice of the employees under the Chief Agencies for the purpose of promotion, leave, gratuity, etc., there can be no two opinions. The employees under the Chief Agencies could not be stated in any sense of the term to be employees of the company. Under agreements entered into by the Chief Agents with the company, the Chief Agents were doing business and the employees under them looked to them for payment of wages. When the Chief Agencies came to an end for some reason or other the service under the Chief Agencies became terminated and if all or some of the employees were taken over by the company for the purposes of attending to their branch business it cannot be stated that the said employees should become entitled to the privileges which the old employees under the company are entitled to. This view was taken by Shri S. P. Varma in his award in the Oriental Govvernment Security Life Assurance Company and the same view was taken by me in my award in the dispute between the Bombay Mutual Life Assurance Company and their workers.
- 81. A number of authorities have been cited in support of the position that an employer cannot deprive the employees of the benefits accrued to them by reason of past services, vide Bombay Garage Ltd. Vs. the Industrial Tribunal, Bombay (1953 I LL.J. p. 14), Lallubhai Amirchand Ltd. Vs. Their workmen (1952 II LL.J. p. 618), Madras Press Labour Union Vs. Artisan Press Ltd., Madras (1953 II LL.J. p. 504). But these are cases where there has been a transfer of ownership of business and the successor company was directed to give benefits etc. which accrued due for service in the predecessor firm. They have no application to the ease of service in Chief Agencies. The demand made by the Association is unreasonable and cannot be allowed.
- 82. Adjustments.—As I have not increased the salary scales for the employees at the head office no question arises regarding adjustment of their salaries. Since the salary scales have been fixed for the first time for the Branch employees, the scales shall come into operation with effect from 1-1-1952. The existing staff will be fitted at the next stage of their scales of salary they were drawing on 1-1-1952. The demand for point to point adjustment made by the Association was rejected by Shri M. C. Shah in his award as the same was not pressed at the hearing. Shri S. P. Varma has considered this question at length in his award in the Oriental Government Security Life Assurance Company dispute and relying upon the awards in Tata Oil Company dispute (1951 I.C.R. P. 520), in Associate Cement dispute (1951 II L.L.J. p. 387) and in Asian Company's dispute (1951 I.C.R. p. 662) he disallowed the demand for point to point adjustment. I do not see sufficient reason to allow such an adjustment in the present case and this demand is therefore rejected.
- 83. Point No. (19): Bonus.—The claim of the Association is for Bonus of two months wages for each of the years 1948 to 1952. In the previous adjudication by Shri M. C. Shah there was a similar claim for the years 1940 to 1946. The adjudicator held that the company was justified in not paying any bonus for the five years 1940 to 1944 and awarded bonus for 1945 and 1946 equivalent to 1/12 of the basic salary in each of the said two years. As regards the year 1947 there was a claim before Shri Bakhale and there was an agreement that bonus should be paid for the said year after Shri M. C. Shah's award was delivered but this agreement could not be enforced as an Ordinance had been issued by the Government of India on the 4th May 1949 whereby all the disputes pending before Industrial Tribunals concerning Insurance and Banking Companies were deemed to have lapsed. So far as the years 1948 to 1952 are concerned the company has paid bonus of one month's wages for each of the years. The company contends that one month's basic salary that was paid during these years was more as a gesture of goddwill to the employees than on the basis of any profits and it is not in a postion to pay more than a month's basic pay as bonus for these years and that the demand for additional bonus is unjust and unreasonable. The learned adjudicator Shri M. C. Shah in his previous award observed that as the acturial valuation at the end of December 1941 disclosed a profit of Rs. 3,203 only the company could not obviously pay any bonus for those years but that the valuation of December 1946 disclosed a profit of Rs. 10,85,703/- the employees ought to get a bonus for the years 1945 and 1946 even though no such bonus could be allowed for the prior years on the ground that an additional burden was being imposed by the pay scales and other reliefs granted by him. Ex. 8(g) which is the acturial valuation report for the year ending 31-12-51

shows that the total profit arising during the quinquennium amounted to Rs. 42,76,493 as against ten lakhs and odd of the previous quinquennium. There can be no doubt that the company became prosperous in the quinquennium ending 31-12-51.

84. It is pointed out on behalf of the Association that other Insurance Companies have paid bonus of one and half to two and half months and even three month's salary. The Oriental Government Security Life Assurance Company gave two months bonus for 1947 to 1950 and two and half month's bonus for 1951 and two months bonus in 1952. The Bombay Mutual Life Assurance Company is said to have given two month's bonus for 1947 to 1951 and one and half months bonus for 1952. The New India Assurance Company is said to have given bonus of two months basic' salary for 1947 to 1949 and 1952 and three months salary for 1950 and 1951. It is pointed out on behalf of the management however that the surplus in the Oriental Government Security Assurance Company was Rs. 3,33,39,000/- and odd as against ten lakhs and odd of Bombay Life Assurance Company for the year 1950. It is seen from the Indian Insurance Year Book of 1950 that the surplus in Bombay Mutual was 25 lacs and odd and the surplus of the New India Rs. 30,77,000 and odd. Whatever might be said about the surplus of 'Oriental' it cannot be denied that the surplus in Bombay Life Assurance Company is at least as much as in the New India Assurance Company and Bombay Mutual Life Assurance Company. Taking all circumtances into consideration I feel that the Bombay Life Assurance Company can afford to pay an additional bonus of half month's wages or 1/24 of the annual basic wages for each of the years 1948 to 1952. The bonus will be paid to such of the employees who are in the company's employ in the respective years or part thereof but will not be paid to those who were dismissed for misconduct. The payment of bonus shall be made within two months of the publication of the award.

85. Point No. (20): Discharge of Shri Y. K. Vichare.—It is contended by the Association that Shri Vichare was discharged unjustifiably in pursuance of the avowed and continued anti-Union policy of the management. It is also stated that Shri Vichare was a member of the Managing Committee and his discharge was in contravention of the Section 33 of the Industrial Disputes Act as the discharge was during the pendency of the conciliation proceedings before the Regional Labour Commissioner (Central), Bombay. The Company seeks to justify the discharge on the ground that Shri Vichare was guilty of misconduct. It is also stated that no conciliation proceedings in the real sense of the term were pending at the time and even if they had been pending the discharge does not ipso facto become invalid but the management could only be subjected to the penalty provided in Section 31 of the Act.

86. I shall first deal with the question relating to the contravention of Section 33 of the Industrial Disputes Act. On a perusal of the file relating to the conciliation proceedings in this dispute which has been placed before me in the course of the evidence it is seen the conciliation proceedings were protracted and were taken up for consideration on a number of occasions. The proceedings began in 1951, and even as early as November 1951 the Regional Labour Commissioner (Central) thought this a matter which was fit for being referred for adjudication. It is however seen that conciliation proceedings continued even in the month. of May 1952 and the Chief Labour Commissioner, Government of India, was also interesting himself in this matter. The Regional Labour Commissioner (Central), Bombay, was asked to expedite the report and send the same by the 5th July 1952 and if he was unable to do so to state the reasons for the delay. In July 1952 Shri S. P. Kale, who assumed charge of the Conciliation Officer, Bombay, in the middle of May 1952 informed the Regional Labour Commissioner (Central), that the draft report was being drafted and that he would be able to submit the same shortly thereafter. The report was accordingly sent on the 12th July 1952 as could be seen from Exhibits 6(a) and 6(b). Exhibits K. to K(7) filed on behalf of the Association however show that conciliation proceedings were pending even from about a month prior to the 20th February 1953 and that the management as well as the Association were being contacted by the Conciliation Officer in order to settle the dispute. It is also seen that negotiations were going on even during the months of April and May 1953. In his evidence Shri V. V. Mungalvedhekar (WW. 4) who is a Labour Inspector (Central), Government of India, states that a report was sent by the Chief Labour Commissioner to Government regarding the conciliation proceedings but he is unable to give the date of the report or to furnish a copy of the report. He however produces letter dated

and that he came to Bombay and effected conciliation proceedings sometimes in May 1953. He has however no knowledge about any report sent by the Chief Labour Commissioner to Government in this connection. S. 12 of the Industrial Disputes provides that the conciliation officer should without delay investigate the dispute and submit a report within 14 days from the date of commencement of the proceedings or within such shorter period as may be fixed by the appropriate Government. In view of this mandatory provision of S. 12 Sub-section (6) of the Industrial Disputes Act, it is doubtful whether conciliation proceedings could be said to be pending throughout the period from September 1951 to May 1953. It is however clear from Ex. K(Series) that some fresh attempt was made with a view to effect settlement in January 1953 and that owing to various causes no settlement could be arrived at till May 1953 even at the intervention of the Chief Labour Commissioner and finally the matter had to be referred for adjudication early in August 1953.

87. Assuming for one moment that the discharge of Shri Vichare was effected during the pendency of conciliation proceedings the question arises whether the discharge order could be set aside merely on the ground that it contravened the provisions of section 33 of the Act. Under Section 31 of the Act there is a penalty provided for contravention of section 33 and that is "imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both". If the discharge had been effected during the conciliation proceedings the management was liable to be criminally prosecuted for having contravened the provisions of section 33. But the matter relating to the discharge of Shri Vichare is coming before me now in the course of adjudication proceedings pursuant to. Reference by Government and I am of the opinion that the question of discharge of Shri Vichare has to be determined on the merits without reference to the question relating to any contravention under the provisions of the section 33 of the Act.

88. The case of the Company is that Shri Vicharey's services were dispensed with on account of his continued and wilful misconduct and in the interest of maintaining discipline in the office. Exhibits 1 to 1 (L) have been filed for the purpose of showing that Shri Vichare was really guilty of misconduct and that the necessary procedure was adopted before the services were actually dispensed with. The Association has filed both documentary and oral evidence to show that the order of discharge was not a bona fide one but was made, in pursuance of anti-Union policy which the mangement is said to have been adopting during the course of the last decade and more. The Association has been at pains to show that the discharge of Shri Vichare is an act of victimization and with this end in view has adduced oral evidence of persons who are said to have been similarly victimized and has also produced documents in support of the cases which have been marked as Exhibits A to D, D (1), E, F(1) to F(6), G series, H and H(1), J to J(3), L, L(3), M and M(1). Shri S. R. Kulkarni (WW-3) an officer incharge of the office of the I.N.T.U.C., Bombay Branch, produces the Minute Book of the Executive Committee of the I.N.T.U.C. marked as Ex. G. At the meeting dated the 14th March 1952, the cases relating to the Director. Executive Committee of the I.N.T.U.C. marked as Ex. G. At the meeting dated the 14th March, 1952, the cases relating to the Directors of the Bombay Life Assurance Company was discussed and a resolution was passed. Ex. G(1) is a copy of the letter which was sent to the Chairman and other Directors of the Bombay Life Assurance Company and Ex. G(2) shows that this letter was despatched by post. Ex. G(3) is a copy of letter sent to Shri Harihar Nath Shastry. In Ex. G(1) appeal was made to the Directors to approach the problem in the spirit of promoting harmonious relationship and peace in the industry and to examine the whole policy of the company with a view to find the way for co-operation and friendliness between the Employers and the employees in the interest of all concerned. A hope was also expressed that the Directors would also examine and formulate the whole policy of the company so that on hearing from them two of the leading members of the committee may meet the Directors and discuss with them the questions at issue. But nothing came out of this appeal and approach.

89. The Company denies the allegations made by the Association as regards the anti-Union policy adopted by the Company and quotes in support of the position the observations of Shri M. C. Shah in his award, namely, "it is not true to suggest that the company had continued all along a policy of harassment and victimization against those who have joined the Union or have taken an active part in it." A perusal of the award however shows that this observation is an isolated one made with reference to the case of reinstatement of some of the workers and that there are several other observations in the award which would go to show that the company was not altogether free from blame.

90. In paragraph 5 of the award it is stated as follows:

"The Union suggest and very naturally that this (those who took a prominent part in the Union were elected as office bearers of the sports club) gave an offence to Mr. Balasubramanian and he took up a very stiff and hostile attitude towards the Union thereafter and started harassing the office bearers and members of the Union."

In regard to the transfer of Shri Mazumdar, the adjudicator has observed that "the transfer took place shortly after the election of the office bearers of the sports club and of the Union's continuing to function inspite of the management's definite direction to the contrary and that gives scope for a legitimate inference that Shri Mazumdar's transfer was not quite in the ordinary course." In paragraph 7 as regards the transfer of Shri Buch to Rajkot it is observed that "in his case the transfer does not appear to be in the normal course but on the other hand it smacks of harassment and is indicative of the policy of sending away undestrable elements from the head office to the Branches." As regards Shri Brinivasan, who was working in the Acturial Section and who was transferred from there to the Loan Section it is stated in the same paragraph that "it is quite plain that his transfer was made as he had incurred the management's displeasure on account of his Union activities and that it was intended as a punishment for such activities and savours of victimization. It does appear that the management had adopted a policy of harassing those who took an active part in Union activities and had on that account incurred its displeasure and of sending them away on one ground or the other." In the last paragraph of the award the following observations have been made:

- "I would conclude these proceedings with the hope that the relations between the company or rather the Manager Mr. Balasubramanian and the employees which undeniably have been strained by the events of the last two or two and half years and which still do not appear to have improved appreciably will now improve. \* \* \* \* \* I would also appeal to the management and Mr. Balasubramanian to treat employees with sympathy and consideration."
- 91. The evidence adduced before me however does not show that the appeal made by Shri M. C. Shah had the desired effect as it is found that the same kind of strained relationship has been continuing to exist even subsequently. As the cases of the several persons who are alleged to have been victimized are not before me for adjudication it would not be proper or useful to deal at length with the evidence that has been adduced regarding the action taken against the several employees.
- 92. It is sufficient to state that Shri Namjoshi was obliged to cease his connection with the Association in order that he may be in the good graces of the management. In Ex. F Shri Namjoshi writes:
  - "I must tell you here that I am not in a position to record here certain statements of the Manager as he has asked me to treat it as confidential. The result is that I may not be able to associate myself any further with the Union activities. It has become clear to me that if I want ultimately the Manager not to act on the transfer order and to continue me here I have to sever myself from the Union activities. If this means that I should resign from the Joint Secretaryship I will have to do that also."

From Ex. B it is seen that the management wanted to curtail even the movements of Shri C. Pimento, the Joint Secretary of the Association. It is stated that before he leaves his seat for any reason whatsoever he should obtain the permission of the Departmental head. Even in Ex. D the same sentiments are expressed. Shri C. Pimento was transferred to the Adrema Department by way of punishment. So far as Shri Deshpande, who has been examined as WW-8, is concerned it is seen that he is the Treasurer of the Union. He was working incharge for Commission Section for 15 years but he is now made to work as an assistant of the Proposal Section. He is a qualified G. D. A. but Shri Parekh, who is not so qualified, has been put incharge of the section and Shri Despande has been demoted just because Shri Parekh was not a striker. Even Shri S. G. Subramanian who has been examined as EW-1 and who is at present an 'Assistant Actuary had to complain about the anti-Union Policy of the management as could be disclosed from Ex. 0 series. He was also transferred to the Adrema Department because of his Union activities. In Ex. O(3) EW-1 states that the Manager said to him "when I was in difficulty you did not help me. I am not happy that you have appeared for the second part of the Institute of Actuaries examination. I do not want you in this office. I am going to harass

you till you resign from this office. I am transferring you to Adrema Department where you shall dust plates. You take up this duty in the Adrema Department from now onwards." In Ex. O(2) EW-1 states, "I do not think that there can be any honourable compromise as long as the present manager is in charge of the office. We should leave aside all sentiments and fight to the end." So far as Shri J. M. Desai was concerned he was transferred to Indore Branch and he stated in Ex. H dated 25th August 1950 that "he would take it that his transfer at Indore Branch was done with the ulterior motive to crush the trade union movement, he being the General Secretary of the Union." Ultimately he had to resign his job. Cases of Sarvashri K. S. Phillips and Athavale have also been cited and evidence has been let in as regards them. Shri K. S. Phillips resigned his job because according to him the treatment accorded by the Manager was intolerable. Shri Athavale behaved rather rudely in the presence of the Manager when he said that he would kick Shri Ghode, the Private Secretary. But his absence on leave. From these remarks it is clear that the Manager adopted a discriminatory attitude towards the persons who are either members or office bearers of the Union and meted out to them punishment in cases in which such punishment would not have been given if the acts had been done by non Union members.

- 93. I shall now proceed to consider the oral and documentary evidence that has been adduced specifically with reference to the discharge of Shri Vichare. The two incidents which gave rise to proceedings against Shri Vichare as a result of which his services were finally dispensed with are found mentioned in Ex. 1(d) and Ex. 1(f) dated the 10th March and 13th March 1953 respectively. In Ex. 1(d) the Manager states that he found Shri Vichare on the previous day at about 4 p.m. wasting his time in the staircase smoking, collecting round him others and discussing with them and that though he was asked not to waste time and to resume his work he did not pay attention to this but decided to remain there for smoking sometime thereafter. On the 10th March 1953 he is stated to have been found by the Manager sitting idle at 4 p.m. talking to his neighbours and not doing any work and that when questioned about it he replied in a casual manner that he had sent for the book and the book had not come. Reference is made to the letter dated the 19th February 1952 and to the final warning given on the 6th March 1952. Ex. 1(f) which is purported to have been written in continuation of the letter dated the 10th March 1953 it is stated that serious reports across 3 to Webare in respect of five matters have been The flye matters are stated to be:
  - The five matters are stated to be:

    (1) Wasting time during office hours by constantly leaving the seat and talking to other Assistants and sometimes to outsiders;
  - (2) Constantly found in the corridors, staircase and bath rooms of the office, smoking and talking to others during office hours;
  - (3) Not attending to work and sitting idle in the scat for long intervals;
  - (4) Commencing work late in the mornings, stopping the work at about 1 P.M. and at about 5 P.M. and spending time from 1 P.M. to 1-45 P.M. and 2 P.M. and 3 P.M
  - (5) Constantly returning to office late after lunch intervals.
- 94. Reference is made to the report received on the 11th March 1953 that Shri Vichare returned on that date after lunch interval at 3-20 p.m. instead of 2-45 p.m. This report is made by Shri S. G. Subramanian and has been marked as Ex. 1(e). An explanation to the letter of the 10th of March and another explanation to the letter of the 13th March given by Shri Vichare have been marked as Exhibits 1(g) and 1(h). In Ex. 1(g) Shri Vichare admits that he was smoking along with one Shri Decosta but states that he did not collect round him any one, did not talk to Shri Decosta or anybody else. As regards his sitting idle at 4 p.m. Shri Vichare says that he was only waiting to receive a book which was to be brought from the second floor. In Ex. 1(h) Shri Vichare denies the allegations made against him and states that he was in the second floor of the Department and was detained for a while for the call of nature. No doubt in his evidence Shri Vichare states another reason viz. that he was closetted with Shri Borker in his room as he was asked to come there to explain some Malaya work but whatever the reason was there is no doubt that the clerk came to the third floor about half an hour late. After these explanations were received no sort of enquiry was held but two letters are obtained one from Shri R. Ramanathan and the other from Shri S. G. Subramanian marked Exs. 1(j) and 1(k). They are in the form of statements. They were obtained behind the back of Shri Vichare and they were not subjected to any cross-examination.

95. As regards taking disciplinary action against employees there is an award of Shri P. S. Bakhale, Industrial Tribunal, Bombay, passed in Adjudication No. 23: of 1948 between the Bombay Life Assurance Company and its employees which prescribes the procedure to be adopted before taking action. With reference to item No. 7 of the dispute relating to disciplinary action an interim award was passed in terms of a Memorandum of Agreement. It is provided that the company will adopt the same rule No. 23 framed under the Industrial Employment (Standing Orders) Act, 1946 as to the dismissal and disciplinary action. Standing order 23(3) provides that no order of dismissal shall be made except after holding an enquiry against the clerk concerned in respect of the alleged misconduct in the manner set forth in clause (4) and clause (4) provides as follows:

"A clerk against whom an enquiry has to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by a clerk working in the same department as himself. Except for reasons to be recorded in writing by the officer holding the enquiry the clerk shall be permitted to produce witnesses in his defence and cross-examine any, witness on whose evidence the charge rests. A concise summary of the evidence led on either side and the clerk's plea shall be recorded."

96. It is admitted that no such enquiry was held. The clerk had no opportunity to cross-examine Shri S. G. Subramanian or Shri Ramanathan. A perusal of Exs. 1(j) and 1(k) shows that an attempt has been made to procure evidence in support of the charges framed in Ex. 1(f). Ex. P has been produced to show that the Manager was in the helpt of dictating statements to his subordinates. and correcting them later so as to preserve them as evidence against employees who were being harassed. The Manager EW-3 admits that the corrections in the draft statement of Mr. G. G. Aire are in his handwriting. The explanation of EW-3 is far from convincing and I am of opinion that Exs. 1(j) and 1(k) have been similarly obtained. In Ex. 1(f) the incidents of 9th, 10th and 11th March 1953 alone are not specifically referred to but general charges of wasting time, of being found in corridors etc., of not attending to work, of commencing work late and of constantly returning to office late have been set out. A perusal of these documents clearly shows that finding that single incidents of the nature set out in Exs. 1(d) and 1(g) will not be found sufficient to discharge the services of a person, general allegations of constant late coming and of wasting time etc. have been made and evidence has been procured to support those time etc. nave been made and evidence has been procured to support those statements. Reference at this stage has to be made to the prior charges against this clerk in previous years. Ex 1 dated 31st January 1950 refers to the incident when the clerk was found near the table of Shri Salchhoy talking to him from 10-45 to 11 a.m. A final warning was given and nothing happened afterwards for about two years. Exs. 1(a), 1(b) and 1(c) referes to two incidents: (1) about leaving the table at 1 r.m. before lunch and at about 5 r.m. in the evening and coming the path around meant for officers for washing and coming himself. and going to the bath room meant for officers for washing and coming himself in a leisurely manner; (2) on 14-2-52 the clerk did not take up his work as soon as the office commenced at 10-45 A.M. but was whiling away his time over some claim papers with which he had no concern whatsoever. As regards both these points the clerk gave an explanation in Ex. 1(b). As regards the first point the clerk says that other clerks also visit the officer's bath room when the water in the staff bath room runs short but if it was the desire of the Manager that he should not visit the officers bath room he would not do so. As regards should not visit the officers bath room he would not do so. As regards the claim papers the clerk says that he was looking at them for a short while as they had got mixed up with his other papers but that all the same he will make desired amends. This explanation was however not accepted and he was given a final warning. Nothing further seems to have happened till about March 1953 when again conciliation proceedings were resumed in respect of the charter of demands. The Manager appear to have been displeased with the Association's persistent efforts to have their demands satisfied and the proceedings against Spri Vichare seem to be the result of only such displeasure. As regards the Shri Vichare seem to be the result of only such displeasure. As regards smoking in the staircase there was also another person along with Shri Vichare smoking in the staircase there was also another person along with Shri Vichare and it is not denied that it was usual for the clerks who happen to be addicted to smoking to go outside the office room to have a smoke in some corner. When the Manager saw Shri Vichare he was holding the cigarette in his hands and Shri Vichare denies that the Manager asked him to resume his seat and he did not care to obey his directions. Though in the charge it is stated that Shri Vichare was having a number of persons around him and discussing with them there is no evidence to support it. There was only one person Shri De'Costa along with Shri Vichare and when questioned about this the Manager says that there was Shri Vichare and when questioned about this the Manager says that there was

another person who was an outsider. As regards wasting time on 10th March, 1953 there is an allegation that the clerk was sitting idle without doing any work and an explanation that the clerk was waiting for some books being brought from the second floor.

- 97. It will be pertinent to refer at this stage to the fact that after the proceedings in February and March 1952 this clerk was asked to sit in the third floor by the side of Shri R. Ramanathan, even though he had to work on books which had to be brought from the second floor. The Evidence of Shri R. Ramanathan (EW-2) shows that while the clerk was sitting and doing work by his side he was not wasting his time by writing personal letters. Through EW-2 states that he had occasion to make oral reports both before and after he was made to sit by his side but he is unable to give the dates of such reports. He says he did not put the warnings in writing as he gave only friendly advice. There is absolutely no written records of any reports made by Shri Ramanathan or by Shri S. G. Subramanian. To my mind the incident of being found smoking on a particular day, of keeping quiet without doing work on the following day and the incident of coming late after lunch interval on the third day have been taken advantage of for framling general charges against the clerk so that his services may be put an end to. Apart from the fact that the procedure prescribed in the award of Shri Bakhale has not been followed in this case which procedure is also required to be followed in the interest of natural justice, I am satisfied that the course adopted by the management is not bona flde, that the punishment meted out in respect of the incident referred to is severe and harsh and that the findings of the management are perverse.
- 98. In such circumstancs it has been held that the Tribunal could interfere and reinstate an employee who has been unjustifiably discharged. In the case of Buckingham and Carnatic Mills—Vs—Their workers (1952 L.A.C. p. 490) the principles which are to govern in determining whether an employee has been properly dismissed have been laid down. In Paragraph 10 of the decision it is observed as follows:
  - "In the third type of cases, namely, where an employee is dismissed for alleged misconduct the questions which arise may be generally formulated as follows:—
    - (i) To what extent and in what circumstances is the Tribunal entitled to interfere with the finding of the Management and the charge against the employees has been proved;
    - (ii) If the charge is held to have been proved to what extent should a Tribung interfere with the punishment which the Management has inflicted.
    - (iii) If the Tribunal holds that the charge has not been proved what relief should a Tribunal award."

It is also observed "it would thus be open to the Tribunal to examine the findings of the management on the charge of misconduct to assure itself that there is evidence to support the finding and that the decision of the management is a possible view on the evidence before it. In such a case the Tribunal should refrain from substituting its own judgment for the judgment of the Management, as in such matters the Tribunal does not act like a Court of Appeal but rather as a supervisory body, exercising what would ordinarily be regarded as powers of revision for correction of basic errors which go to the root of the matter and of capricious action on the part of the management or the fact that the trouble had been provoked by the action of the Management, may be relevant factors for consideration in determining whether interference with the decision of the Management is called for. The result therefore is that the decision of the Management in relation to the charges against the employee will not prevail if:

- (a) there is want of bona fides, or
- (b) it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or
- (c) there is a basic error of facts, or
- (d) there has been a perverse finding on the materials."

As regards the right of the management to decide the proper punishment the Labour Appellate Tribunal proceeds to observe as follows:

"Its decision is liable to revision if the Tribunal is of opinion that the punishment is so unjust that remedy is called for in the interest of justice. It must however be remembered that it is essential that the matter should not be viewed altogether subjectively from

the point of view only of the employer of employee but also objectively in the interest of industry for bringing about harmony in the relationship between the two."

- 99. I have already found on the facts that there has been want of bona fides on the part of the management in that they magnified certain shortcomings of the employee to such an extent as to make out a case of general unwillingness to work or habitual lateness in attending office so that the punishment of dismissal may be meted out. I have also found that there has been a violation of the principles of natural justice and that the punishment meted out to him was unduly harsh.
- 100. My attention has been drawn to certain reports of the United States Supreme Court. In volume 85 Lawyers Edition of the United States Supreme Court Reports pages 369-370 the following observations are found:
  - "10. In determining whether employees were discharged because of their union membership, the National Labour Relations Board is justified in relying on circumstantial evidence, and is not required to deny relief merely because there is no direct evidence that the employer know the employees had joined the union and was displeased or wanted to make an example of them."

In volume 84 Lawyers Edition of the same report at page 1226 it was held that the finding of a National Labour Relations Board that an employee was discharged for union activities is supported by substantial evidence if the evidence showed that grievances such as that the employee had been insubordinate, was late for work and quite early on several occassions and wasted time talking to his-co-employees which never been asserted against the employee until he had interested himself in union activities. In the same volume there is another case where it was held that a finding of the National Labour Relations Board that an employee was discharged for union activities and not for smoking as contended by the employer is supported by substantial evidence where shortly after becoming interested in the organization of Union, the employee while on his way to see an official of the employer who had sent for him was caught smoking by another official at a place in the plant where that officer seldom visited and upon entering the office of the first official was immediately charged by him with smoking in the plant and told to take two weeks off although nothing was said to two other employees who were also smoking at the same place. In the present case it is admitted that even though action was taken against Shri Vichare no such action was taken against Shri DeCosta who was also found smoking at the same time. On a consideration of the facts in this case as well as the authorities I have come to the conclusion that the discharge of Shri Vichare was not justified and that in any event the punishment meted out to him was extremely severe and unduly harsh. I therefore find that Shri Vichare is entitled to reinstatement but in view of the circumstances already set forth he will be paid his salary and dearness allowance only for a period of six months preceding the reinstatement. He will be reinstated in service within a fortnight after this award becomes operative.

- 101. Having so far dealt with all the points that have arisen for consideration in this reference I now proceed to summarise the findings and directions contained above which are as follows:—
  - (a) I find that if good grounds exist for reconsideration of the award of Shri M. C. Shah with regard to any of the points that have been referred, it will be open for me to reconsider the previous award and grant such relief as the workmen may be entitled to it even though change of circumstances since the passing of the previous award are not established.
  - (b) I see no reason to alter the existing scales of pay in this company except to the extent of steeping up the maximum to Rs. 330/- by having six annual increments of Rs. 15/- each. The scale for clerical employees in the head office will therefore be: Rs. 75—5—105—E.B.—6—135—8—175—10—215—E.B.—12½—240—15—330.
  - (c) There will be introduced a Record Grade in the head office in the scale of Rs. 50—3—74—E-B.—3—80—5—120.
  - (d) In the Branches the scale of salaries for the clerical employees will ber Rs. 60-4-80-E.B.-5-105-7-140-8-180-E.B.-10-210-12-270.
  - (e) The scales of pay of the Record Grade in the Branches will be Rs. 45-2-59-3-80-5-90.

- (f) Peons will be eligible to be promoted to the Record Grade both in the head office and in the Branches. Only those Peons who have studied up to the Seventh Standard English and who are found fit as a result of an examination to be held by the management will be eligible for promotion to the Record Grade.
- (g) The necessity to maintain efficiency bars has been recognized and will continue to remain.
- (h) There will be no revision of the salaries of the subordinate staff in the head office. Subordinate staff in the Branches will get the same scale of salaries as subordinate staff in the head office.
- (i) The Dearness allowance to the employees will be increased by Rs. 10 per month in the case of every employee both clerical and subordinate staff whether in the Head office or in the Branches. The enhanced Dearness Allowance will be paid with effect from 1st January 1952.
- (j) The claim that a portion of the Dearness Allowance should be absorbed in the basic salary is rejected as also the demand for full Dearness Allowance for an employee on leave, on half pay or loss of pay.
- (k) Acting Allowance of Rs. 15 per month for acting for 15 days or more granted under Shri M. C. Shah's award is confirmed and the direction is made applicable to Assistants or Assistant Cashier who act in the place in the Branches for the Branch Manager or the Cashier.
- (1) The peon who acts in the place of a Havildar or a peon who acts in the place of a liftman would be given an allowance of Rs. 7 per month.
- (m) Assistants who disburse staff salary will be paid Rs. 3 per diem during the days when they attend such work.
- (n) Allowances to Bank Peons or service or delivery peons are denied.
- (o) Overtime allowance is outside the scope of the Reference and overtime allowance existing for working on holidays is quite fair and will continue.
- (p) No special allowances are allowed beyond those which are already in existence.
- (r) A machine allowance of Rs. 10 per month is allowed per employee operating machines such as Hollerith, Comptometer and typewriter. No allowance will be given for operating franking or punching machines.
- (s) Gratuity benefits granted under Shri M. C. Shah's award will be extended to the employees of the Branches and this gratuity benefit: will be given to all those who retired subsequent to 2nd February 1951, or to the heirs of those who died subsequent to the said date.
- (t) There will be no change in the working hours of the clerical staff or the subordinate staff.
- (u) Leave facilities that are existing are found to be adequate except in the case of Casual Leave which has been enhanced to 15 (fifteen) days in a year and allowed to be availed for six days at a time.
- (v) The claim of the Association that increments as per Shri M. C. Shah's-award had been denied is generally well founded and employees-should be given increments as per award and necessary adjustments and payments of arrears will be made.
- (w) Sarvashri V. A. Kanahare, K. N. Vaidya and S. R. Sawardekar will be made permanent if not already made and they should be paid the increment due to them as per the award of Shri M. C. Shah.
- (x) The complaint made by the Association that there has been discriminatory treatment to certain employees in the shape of granting special increments is not without foundation and some of the employees had been given increments on considerations other than merit or efficiency with ulterior motives.
- (y) All temporary employees unless they have been specifically recruited as temporary hands for doing work of a temporary nature should be confirmed at the end of six months.
- (z) The demand made as to the continuance of the period of service of employees under the Chief Agencies is found to be unreasonable and is disallowed.

- (aa) The new scales of salaries for employees at the Branches shall come into operation with effect from 1st January 1952 and the existing staff will be fitted at the next stage of their scales of salary they were drawing on 1st January 1952. The demand for point to point adjustment is rejected.
- (bb) An additional bonus of half month's wages or 1/24th of the annual basic wages will be paid to each of the employees in the head office and the branches for each of the years 1948 to 1952.
- (cc) The bonus will be paid to such of the employees who are in the Company's employ in the respective years or part thereof but will not be paid to those who were dismissed for misconduct. The bonus will be paid within two months of the publication of the award.
- (dd) Shri Y. K. Vichare's discharge is unjustified and he will be reinstated within a fortnight after the award becomes operative. He will be paid his salary and Dearness Allowance only for a period of six months preceding the reinstatement.

An award is therefore passed in the terms above stated.

\*CALCUTTA;

(Sd.) S. BHARTAVATSALU, Chairman,

The 12th May, 1954.

Central Government Industrial Tribunal, Calcutta.

[No. LR-90(17).]

S.R.O. 1945.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Delhi, in the dispute between the Punjab National Bank Limited and their workmen.

# BEFORE SHRI RAM KANWAR, CENTRAL GOVERNNMENT INDUSTRIAL TRIBUNAL, DELHI

Adjudication in the matter of an Industrial Dispute
Between

The employers in relation to the Punjab National Bank, Limited

AND

Their workmen.

#### AWARD

By an order No. LR.100(98), dated the 2nd September 1953, the Central Government being of the opinion that an industrial dispute existed between the employers in relation to the Punjab National Bank Limited and their workmen in respect of the matters specified in schedule I and in column 3 of schedule II annexed to the order and in exercise of the powers conferred by section 7 read with section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), and in supersession of the order of the Government of India, the Ministry of Labour No. S.R.O. 636, dated the 31st March, 1952, constituted an Industrial Tribunal of which I was appointed the sole member and referred to me the said dispute for adjudication.

#### SCHEDULE I

"Absorption of Bharat Bank employees in the Punjab National Bank Limited and their service conditions.

#### SCHEDULE II

S. No.	Names of workmen	 Nature of dispute
(1)	(2)	(3)
2. 3. 4.	Shri Purshottam Das Shri Pateshwar Singh Shri Swaran Singh Shri Dilip Singh Shri Pyarey Lal Verma Shri Krishan Dev Shastri	 Dismissal from service. Discharge from service. Discharge from service. Discharge from service. Termination of employment. Discharge from service.

S. No.	Names of workmen.	Nature of dispute.
(1)	(2)	(3)
8. 9. 10. 11.		 Suspension from service. Reduction in pay. Withholding of allowance. Termination of service. Forfeiture of bonus and stoppage of increment.
13. 14. 15. 16. 17. 18. 19. 20.	Shri Bəlraj Mali Shri Ram İtwari Shri Jassi Ram Shrı Malik Udho Das Shrı Chander Bhan Bhatia Shri Purshotam Lal Syal Shri Gurdas Mal Shri Sarvan Dev Bhandari Shri Ram Nath Sahai Shri Prem Nath Uppal	 Non-confirmation in service. Non-confirmation in service. Non-confirmation in service. Discharge from service. Discharge from service. Confirmation in service. Withholding of annual increment. Victimisation. Imposing of fine. Withholding of increment and
	Shri Om Prakash Sharma Shri Ramji Das	 stoppage of local allowance. Payment of compensation. Payment of full amount of efficiency
24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37.	Shri Khairati Lal Manga Shri K. D. Sharma Shri Rikhi Kesh Dhawan Shri Rikhi Kesh Dhawan Shri Shiv Charan Lal Puri Shri Lal Chand Goyal Shri Ram Charan Shri Ram Sewak Dubey Shri Bansi Lal Shri Ba. L. Srivastava Shri Kripa Shanker Shri Manohar Lal Booty Shri N. K. Parao Shri Chanderpal Gupta Shri Saran Dayal Shri Kaniyalal Burman Shri Sunderlal Chandna Shri Hukam Chand	 allowance. Forced resignation from service. Withholding of bonus for 1948. Termination of service. Discharge from service. Withholding of increment. Discharge from service. Discharge from service. Confirmation as Recordkeeper. Confirmation as Recordkeeper. Confirmation in supervisor's Grade. Dismissal from service. Termination of employment. Grant of increment and confirmation from earlier date. Termination of employment. Promotion to supervisor's post. Payment of annual increment.

<sup>(2)</sup> By a subsequent order No. LR. 100(98), dated the 2nd November 1953, the Government of India, Ministry of Labour, the entries in schedule No. II against serial numbers 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 17, 20, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, and 40 were omitted and the following entries were inserted.

41. Shri Munshi Lal

Discharge from service.

42. Shri Vinayak Prasad

Forced retirement from service.

- (4) Now I shall take up the individual cases of workmen in schedule No. II, seriatim.
  - 1. Shri Purshotam Dass:

#### PRESENT:

Shri Purshotam Das in person with Shri H. L. Puri, General Secretary, All Indian Punjab National Bank Employees Federation.

Shri Om Prakash Gupta with Shri M. K. Jain-for the bank.

(5) Shri Purshotam Das joined the service of the bank as a clerk on 10th February 1943 and had been serving at its Chandni Chowk branch throughout the period of his service, upto May, 1948.

<sup>(3)</sup> As the dispute covered by schedule No. I is likely to take sufficiently long to decide I propose to dispose of the disputes covered by schedule No. II by this award, so that the persons concerned and the bank may not have to wait very long for the decision of these disputes.

- (6) On 14th May, 1948, he proceeded on sick leave. His leave with pay was exhausted on 16th September 1948 and a fresh application for one month's leave on that date was sanctioned without pay. On 2nd October, 1948 he again made an application for one month's leave which was followed by another similar application on 4th November, 1948, on the ground of the sickness of his mother. On 1st December, 1948, one month's further leave was again applied for due to the death of his mother. On 5th January, 1949, another application was made for one month's leave due to family circumstances. On 14th January, 1949, he was served with a notice by the bank asking him to resume duty immediately, with the result that he reported for duty on 24th January at Chandni Chowk office. On the following day, he received an order transferring him from Delhi to Rewari branch and he was ordered to report himself the same day for duty to the Manager of that branch. On the following day, he made a representation, of which Ex. P/1 is a copy, for the cancellation of his transfer.
- (7) The Bank's case is that on 1st Feb., '49, the order of his transfer to Rewari was cancelled and he was directed to report to its Provident Fund department at Delhi temporarily. It is also stated by the bank that a copy of that order was made over to Shri Purshotam Das and his initials were obtained on the original order. Those intials are denied by the workman as his and no attempt has been made by the bank to prove that the initials purported to be of the workman are really his.
- (8) In this connection, it is significant that a note was sent on 12th Feb., '49 to the Manager of the Provident Fund department enquiring whether Shri Purshotam Das had joined his office and the reply to that note dated 17th February 1949 was in the negative. Purshotam Das kept quiet upto 23rd February 1949. In his letter dated 23rd February 1949 of which Ex. D. 2 is a copy, it is admitted by him that he had been attending office upto 1st Feb., '49. In that letter he had requested to be fixed permanently in some branch of Delhi and had also stated that Mr. Gupta, the Staff Manager, had informed him that he could not be posted permanently in any local branch. It is not explained that when such was the case how Purshotam Das remained ignorant of the order made on that date of his transfer to the Provident Fund department. The bank's letter dated 4th March, 1949, of which Ex. P. 2 is a correct copy, is important. In that letter, it was stated that since Purshotam Das had failed to report himself to the Provident Fund department where his services were transferred, he should furnish an explanation why disciplinary action should not be taken against him. His reply to that letter is dated 7th March, 1949, and Ex. D. 3 is a correct copy of it. In that reply, no offer was made by the workman for permission to join the Provident Fund department. The relevant portion of that reply reads thus:—
  - "In response to my representation of 26th January 1949, I had nothing to acknowledge from you prior to your letter of 4th inst. received on 6th inst. It is, therefore, besides the question to ask me to submit an explanation for your further action. My letter of 26th January is still open for your final action based on full credit being given for the intervening period".
- (9) It was very peculiar on the part of the workman to go on sending letters to the bank from time to time instead of presenting himself to obtain necessary orders about his posting there and then. Later on, he adopted a very deflant attitude and sent very offensive letters to the Manager. Ultimately, he also served a notice on the bank through a lawyer on 28th July, 1949, in which he claimed the payment of his salary upto 15th July, 1949. The language of that letter is very offensive and it is significant that no damages were claimed in it for his alleged wrongful dismissal. In the absence of any explanation by him the bank had dismissed him from service by its order dated 15th July, '49, which was conveyed to him by post. Ex. P/4 is a correct copy of this letter. The workman's contention now is that his dismissal was wrongful and was made mala fide and that the bank be directed to reinstate him in its service in his former place and position and to pay all his back wages including salary and allowances and other emoluments including bonus from the date of his dismissal to the date of reinstatement.
- (10) The bank denied his claim and stated that his dismissal was bona fide and perfectly legal and justified. It is no doubt, correct that the workman was not formally charge-sheeted by the bank and that no formal enquiry was held in the matter before his dismissal. But in my opinion, the letter dated 4th March, 1949 referred to above amounted to a charge sheet and the absence of his explanation to the same justified the bank in the order of his dismissal. In this connection I

have also to take into consideration the fact that the workman has not produced any evidence to show that the act of the bank, so far as he was concerned was in any way unjustified or mala fide. On the other hand, I find that at his own request his transfer to Rewari was cancelled by the bank. It appears that his appointment to the Provident Fund department temporarily did not satisfy him and that he went on making unreasonable requests to the bank to gain his object of some permanent post in Delhi.

- (11) For the above reasons, I have no hesitation in holding that his dismissal was perfectly valid and since he has been paid his dues no further direction is necessary in this connection.
  - 5. Shri Pearey Lal Verma.

#### PRESENT:

Shri Pearey Lal Verma, workman in person. -

Shri Om Parkash Gupta with Shri M. K. Jain-For the bank.

- (12) This dispute was compromised by the parties on payment of Rs. 300 by the bank to Shri Pearey Lal Verma, in full and final satisfaction of his claim, on 1st March, 1954. There is thus no occasion for any direction in this connection.
  - 12. Shri Balraj Mali.
- (13) The workman concerned did not care to put in appearance before me in spite of personal service of notice upon him. The bank's allegation is that the worker has no claim against it. The claim was, therefore, dismissed for default on 15th January, 1954.
  - 15. Shri Malik Udho Das.

#### PRESENT:

Shri Malik Udho Das, workman in person.

Shri O. P. Gupta with Shri M. K. Jain-For the bank.

- (14) He was previously an employee in the Central Bank of India at Jamke Chata in Punjab now in Pakistan but in 1943, he joined the service of the Punjab National Bank as Godownkeeper at that place and was made officiating accountant in-charge in 1944 and was confirmed in that post in 1946. At that time he was getting Rs. 88, as substantive salary plus Rs. 30 as dearness allowance, plus Rs. 20 as local allowance, plus Rs. 14-2-6 as bonus per mensem.
- (15) On 18th August 1947, he left Jamke Chata and went to Layallpur on account of the partition of the Punjab and the consequent communal disturbances. From Layallpur he sent a report to his Head Office at Lahore and Ex. D. 5 is a correct copy of that report.
- (16) In December, 1947, he reported himself at the Head office of the bank at Delhi and was attached as a clerk to group No. 2 under District Manager, Pakistan office.
- (17) In January 1948, he was deputed to proceed to Lahore in connection with the salvage work and reported back for duty on 14th February 1948.
- (18) On 24th March, 1948, he was required to furnish certain information relating to his Jamke Chata Office vide letter Ex. P.I.
- (19) On 20th April, 1948, he was discharged from service. Ex. P.4 is a copy of that order and reads thus:—
  - "Your services are no more required by the bank. You are hereby discharged from bank's service today after noon on payment of one months' salary in lieu of notice. Your dues will be settled in due course."
- (20) It appears that he accepted the arrears of his salary upto the above mentioned date along with one month's salary in lieu of notice without any protest.
- (21) On 24th April, 1948, he made a representation for reinstatement. His allegation that he was offered reinstatement provided he agreed to go to Lahore which condition he did not accept on account of insecurity of Hindus, is denied by the bank. On the other hand, the bank's version is that his prayer was turned down because the report of the office on his representation was that during his

stay at Jamke Chata, the Pay Office showed no profits and was always undergoing a loss and that the District Manager was not prepared to accommodate him.

- (22) Subsequently, cash order No. 521/48, dated the 11th June, 1948 for Rs. 170-13-0 on account of his own contribution to the Provident Fund was sent to him but he returned the same along with his letter, dated 13th June, complaining of the withholding of the bank's contribution to his Provident Fund. The bank's reply to that letter is dated 24th June, 1948 and Ex. D/3 is a correct copy of that reply. In that letter, it was stated that the bank's contribution to his. Provident Fund and his security were withheld for the following reasons:—
  - "That you delivered the stocks of M/s. Iqbal Singh Kalyan Singh & Co. to them, which were pledged with the bank without receiving cash payment. By doing so you acted in contravention of the set instruction and procedure of the bank, and have thus exposed the bank to a serious loss.
  - 2. You say that you received a letter of guarantee from M/s. Narain Singh Sunder Singh which was also not been furnished to us. The cheque which you received from M/s. Narain Singh Sunder Singh in respect of the goods delivered was also for part amount and you received this cheque on 9th August, 1947 in D/D account. It could not be presented to the Bharat Bank Ltd. due to disturbances. M/s. Narain Singh Sunder Singh have been contacted but with no reply. The address of the borrowers M/s. Iqbal Singh Kalyan Singh & Co. is not known.
  - Under the above circumstances, you are solely responsible for any loss the bank suffers on account of your above acts as you acted in contravention of the instructions and procedure of the bank and delivered the stocks without receiving cash and full payment thereof."
- (23) On receipt of this letter, Malik Udho Das served a notice on the bank through his lawyer, Shri Gopal Das on 4th August, 1948, denying his liability for the loss alleged to have been suffered by the bank and demanding the refund of full amount of the provident fund together with security deposited by him with the bank together with the security stated to have been deposited with the clearing agents, Narain Singh Sunder Singh, for the refund of which the bank was also stated to be liable. It is also stated in the notice that in case his demand was not met he would file a suit against the bank for the recovery of the same. It is significant that there is no mention in the notice of any compensation for his alleged wrongful discharge.
  - (24) The bank sent a reply to that notice denying its liability for the demand.
- (25) Shri Malik Udho Das thereupon filed a claim against the bank under section 13 of the Displaced Persons (Debt Adjustment) Act and it is still pending in the Tribunal constituted under that Act.
- (26) M/s. Iqbal Singh Kalyan Singh had three following accounts in the bank's branch at Jamke Chata:
  - (i) Cash credit account with a limit of Rs. 1,50,000.
  - (ii) Clean D/D account with a limit of Rs. 7,000 in 1946.
  - (iii) Documentary D/D account with a limit of Rs. 15,000.
- (27) In 1946, all the grain stocks in the custody of the banks in the Punjab were frozen by the Punjab Government in accordance with the Monopoly Procurement Scheme and they appointed clearing agents for the necessary disposals of those stocks. M/s. Narain Singh Sunder Singh were one of such clearing agents. As Malik Udho Das had also deposited some security with that firm it appears that he was also a nominee of that firm as stated by the bank.
- (28) The cash credit account of M/s. Iobal Singh Kalvan Singh of Akalgarh office, of which Jamke Chata was a branch office, showed on 30th July, 1947, a debit balance of Rs. 27,512-13-1, and after a credit entry of Rs. 10,104-2-0, proceeds of a cheque on 9th August, the account showed a debit balance of Rs. 17,408-11-1. Copy of the whole account is Ex. D/6.
- (29) It is common ground that Shri Udho Das on receipt of the above mentioned cheque on 9th August, 1947, released goods covered by that amount out of the goods of the firm pledged with the bank. The remaining goods of the firm were released on receipt of an alleged guarantee letter for Rs. 17,000 of M/s. Iqbal Singh Kalyan Singh endorsed by the clearing agents. The alleged guarantee letter is not forthcoming and it is alleged by Shri Udho Das that it

remained along with other papers in the bank's safe in Jamke Chata and that all the papers of the bank as well as the goods pledged with it were subsequently burnt and looted by the Muslim hooligans. The contention of Malik Udho Das that the above procedure adopted by him was in accordance with the circulars issued by the bank and the conditions of the procurement scheme is not supported by any evidence. Similarly, his allegation that certain notifications or circulars were issued by the Punjab Government to the bank's regarding the acceptance of guarantee letters of the clearing agents for the delivery of food-grain stocks pledged with them remains unsupported by any evidence. The Procurement scheme, a copy of which is on the file, is altogether silent as to the manner of payment of the price of food grains procured under it.

- (30) The state of affairs in connection with the account of M/s. Iqbal Singh Kalyan Singh as given in Ex. D.6 is also supported by the complainant's report dated 18th August, 1947.
- (31) Malik Udho Das's allegation that the limit of D/D account of M/s. Iqbal Singh Kalyan Singh was raised to Rs. 10,000 in 1947 is not supported by any evidence but this question becomes unimportant when we find that no objection was raised by the bank to the acceptance of the above mentioned cheque for Rs. 10,104-2-0 as part payment in that account. Again, the non-recovery of the amount of the cheque was due to the bank's negligence in not presenting it for payment in time. The Bank's suit for the recovery of the amount due on the cheque was also dismissed by the court of Senior Sub-Judge of Gurgaon on that ground although that judgment is not final, because it is under appeal in the High Court.
- (32) As already observed the alleged letter of guarantee is not forthcoming nor has the fact that it was ever in existence been proved by Malik Udho Das. It is hard to believe that he should have left such an important document behind him at Jamke Chata when he went to Lyallpur. It is, therefore, apparent that the delivery of goods i.e. food-grains by Malik Udho Das without the realization of the amount against which they were pledged was altogether unjustified and that this act of his put the bank to a loss of that amount.
- (33) The bank's preliminary objection that Malik Udho Das on account of his being an Accountant and in sole charge of Jamke Chata branch, was an officer and not a workman, is not at all tenable. Firstly because he was only a clerk at the time of his discharge and secondly, because even his position at Jamke Chata was in no way that of an officer. He was acting there in accordance with the directions of the Head Office at Akalgarh.
- (34) It is correct that the petitioner was not charge-sheeted before his discharge nor was any opportunity given to him to explain his alleged misconduct but that absence became immaterial when the whole question was fully gone into in this Tribunal and the parties have not only been given an opportunity to produce their evidence but had also availed of the same.
- (35) It is also to be taken into consideration in this case that Malik Udho Das does not even allege any mala fide or caprice on the part of the bank.
- (36) This case was also dealt with by the Sen Tribunal and its finding went against Malik Udho Das. When the award of that Tribunal was set aside by the Supreme Court on a technical ground, which had nothing to do with Malik Udho Das's case, the matter was again referred to this Tribunal for adjudication. The contention of Malik Udho Das that his case was not properly placed before that Tribunal by the Union representing him there, is apparently an after thought.
- (37) Malik Udho is not entitled to any relief in this Tribunal in connection with the withholding of his securities and the bank's contribution to his Provident Fund, simply because he has already sought that relief in a Civil Court. His other relief for reinstatement is also not available to him due to his above mentioned wrongful acts and the report of the Manager on his application for that relief.
- (38) The result, therefore, is that I do not see any ground for interference and reject his cliam.
  - 16. Shri Chander Bhan Bhatia.

## PRESENT:

Shri Chander Bhan Bhatia, workman with

Shri H. L. Puri of the Union.

Shri O. P. Gupta with

- (39) This gentleman entered the service of the bank on 23rd May, 1938 and in the beginning worked as a court clerk at Lahore upto 1945. He was then transferred to the District Manager's Office, Lahore. After partition, he continued working in the same office which was designated as D.M. Pakistan Branches at Delhi. He was discharged from the service on 20th April 1948 and was paid one month's salary in lieu of notice. Full amount of Provident Fund, the security deposited by him and the bonus for 20 days of April were also duly paid to him.
- (40) There was a regular game of hide and seek for several days before the order of his discharge, between him and the management. He applied for leave for one day on 14th April, 1948 due to some trouble in his foot and it was granted. He attended office upto 20th April after that. It appears that on 20th April, a letter was sent to him at his home address informing him of his discharge from Bank's service on payment of one month's salary in licu of notice. On 21st April, 1948, he again applied for leave for one day stating that he had attended office regularly from 14th April, 1948 and that on account of the injury in his foot he had got fever previous evening.
- (41) On that application, the report of the office was that orders for his discharge had since been issued but the subject is not receiving the letter of discharge and has put up leave application instead.
- (42) On 22nd April, 1948, he again applied for leave for 22nd and 23rd April. On 24th he again applied to the Manager for one week's leave from that day and also stated in the application that he had seen the Manager in office on 22nd April, 1948. The application was supported by a medical certificate. From this application, it is apparent that he was intentionally refusing to receive the order of discharge as reported by the office on his application dated 21st April, 1948.
- (43) On 26th April, 1948, again a letter was sent to his home address informing him of the order of discharge and of the rejection of his leave application after the date of discharge.
- (44) On 30th April, 1948, he again submitted an application for 15 days leave supported by a medical certificate. It was also stated in that application that as advised by his Doctor he was leaving for Kaithal for change of climate on the following day and that he would inform the bank of his Kaithal address on his arrival at that place.
- (45) It appears that on receipt of his Kaithal address, a registered A/D letter was sent to him on 15th May, 1948 again informing him of the order of his discharge.
- (46) It is alleged by the bank and not denied by the employee that he submitted a representation on 22nd April, 1948 stating that he should not be discharged and should be allowed to continue his service for one year more and that in his letter, dated 29th April, 1948 he stated that he should be allowed to resume his duty and that after joining he might be given the chance of getting his 11 months privilege leave then due and 9 months sick leave preparatory to retirement and be allowed to retire after that.
- (47) His case was considered by the Sen Tribunal. As he had already attained the age of 55, there was no question of his reinstatement but he was allowed six months' salary by way of compensation. He received that amount from the bank but as the Sen Award was set aside by the Supreme Court on a technical ground, a fresh reference was made relating to his dispute and he came forward with a fresh claim demanding 26 months' salary with all allowances and bonus from date of discharge (20th April. 1948) to his retirement date (21st June 1950) less six months salary already received by him.
- (48) It is somewhat strange that no reason was given for his discharge in the order of 20th April, 1958 but when he submitted a representation to the General Manager on 27th May 1948 for the reconsideration of his case, it was only then that the report of the office dated 28th June, 1948 was to the following effect:—
  - "Mr. Chander Bhan Bhatia was one of the spare hands. As he is old and an exhausted hand and his age is 53, he is now not fit for hard work required by a bank employee, he was, therefore, discharged."
- (49) It is significant that no such charge was brought against him before his discharge. On the other hand, we find that only a short time before his discharge he was recommended by his immediate officer for the post of Accountant and the D.M. made an order that that recommendation would be considered on the occurrence of next vacancy of that post.

- (50) The real reasons of his discharge was (as is now stated by the bank in its written statement) as below:—
  - "After the partition, when the Head office shifted from Lahore to Delhi, the bank endeavoured to absorb as many refugee employees as possible. Some of them were absorbed in the Head Office and about 50 branches were started in various parts of India, with a view to absort as many refugees as possible. These branches were opened in the hope that they would attract enough business but this hope was not realised and some of these branches had to be shut down, as to have continued them, would have meant serious loss to the bank. This necessitated the discharge of a large number of employees."
- (51) In this connection, it is to be taken into consideration that in the Punjab National Bank, Monthly Magazine of August, 1949, it was reported that the then Chairman of the bank stated on 20th July, that only previous year the bank had recruited 300 people. That being the case, it was really inconsiderate on the part of the bank to discharge this employee at the fag end of his service without any reasonable excuse and when it was apparently impossible for him to succeed in getting a fresh job elsewhere.
- (52) The objection raised by the bank that the dispute referred to this Tribunal is regarding the employees discharged from bank's service, the question of paying compensation to him cannot be gone into, is obviously untenable. It is apparent that there can no question of his reinstatement simply because he had already attained the age of 55. That being so, the only relief that can possibly be granted to him in this dispute is of payment of compensation.
- (53) It is apparent from the facts and circumstances mentioned above that this employee's case is a hard one and that the treatment meted out to him was altogether unjustified. But his present claim is obviously highly exaggerated, especially when on his own representation of April, 1948, he had only claimed service for one year more. In my opinion, he was entitled to three months notice before discharge as laid down in the award of Sastry Tribunal and that further he was entitled to enjoy the privilege leave of 1½ months which he had already earned and also to five months salary with allowances as gratuity for having put in ten years service. It is, therefore, ordered that the bank shall pay 2½ months salary with allowances to this employee within a month after the publication of my award. This amount would be over and above the amount of compensation allowed by the Sen Tribunal and already paid to him by the bank.
  - 18. Shri Gurdas Mal.
- (54) The workman concerned did not put in appearance before me in spite of service of notice upon him. As the management of the bank denied him claim the same was dismissed for default by my order dated the 15th January, 1954.
  - 19. Shri Sarvan Dev Bhandari.

Shri Sarvan Dev Bhandari, workman with

Shri P. R. Bhatia, General Secretary, Punjab National Bank Employees Union, Punjab.

Shri O. P. Gupta with

- (55) Shri Sarvan Dev Bhandari entered the service of the Punjab National Bank as an unpaid apprentice in November, 1941 in its Patiala branch and subsequently rose by stages to the rank of Supervisor on 1st September, 1946 and also earned special increments over and above his usual increments between the above period. On 1st September, 1947, his salary was Rs. 105 per mensem.
- (56) The employees of the bank throughout India made a strike which resulted in the dismissal of all the striking employees numbering over 3,000. The agitation continued and ultimately by the intervention of the Central Government the bank management agreed to reinstate all the strikers excepting 150 persons against whom they urged certain positive objections and the Government agreed to refer their case to an Industrial Tribunal for adjudication. Out of these 150 persons, 94 including Mr. Bhandari were actual office bearers of local units, Provincial Unions and the Federation.
- (57) In the case of all these 150 employees, the Labour Appellate Tribunal held that the dismissal was wrongful and that decision was upheld on appeal by the Supreme Court. Now the question of awarding necessary relief is to be decided by the Labour Appellate Tribunal.

- (58) In November, 1947, the Patiala branch of the bank was inspected by the Inspecting officer and his remarks about the work of Mr. Bhandari were as below:—
  - "The work of the employee is fairly clear and accurate. His hand writing is fair and the speed of his work is normal. He is fairly efficient and hard working young man. He lacks discipline. He was another member of the staff who instigated the staff against the institution. He encouraged indiscipline in the office, as a result of which he himself lost control over the staff and the routine in his section deteriorated. He should have spent his energies in a more constructive manner to improve the branch routine."
- (59) The result of this report was that Mr. Bhandari's increment which in ordinary course became due on 1st September, 1948, was withheld. It is somewhat strange that no copy of the adverse remarks was supplied to the employee concerned in spite of his request to that effect nor was he charge-sheeted on that point or called upon to furnish explanation for that action of the bank. But subsequently, on the recommendation of the local manager, the withheld increment was allowed with effect from 1st April, 1949, that is, there was a delay of 7 months in allowing the increment. Another increment of his which fell due on 1st September, 1950, was also withheld on the ground that the award of the Sen Tribunal had hardly then been published and an appeal was pending in the Supreme Court against it.
- (60) Shri Bhandari's contention is that the withholding of the above mentioned increments was altogether unjustified and he wants a declaration by this Tribunal to that effect, with a view that the award of this Tribunal would be helpful to him in his claim before the Labour Appellate Tribunal, whether it orders his reinstatement on allows him suitable compensation.
- (61) The report of the inspection officer itself indicates that though his work was satisfactory he was criticised simply because he instigated the staff against the institution. In the absence of any charge sheet or the calling of any explanation from Shri Bhandari the withholding of the first increment was apparently unjustified. Again there was absolutely no reason for withholding the increment which fell due on 1st September 1950. The result, therefore, is that I hold and declare that the increments which had fallen due to Shri Bhandari on 1st September, 1948 and on 1st September, 1950 should have been allowed to him by the bank with effect from those dates.
  - 24. Shri Khairatilal Manga.

Shri Khairati Lal Manga, workman in person

Shri O. P. Gupta with

- (62) Khairati Lal Manga joined the service of the bank on 20th July, 1944 as junior grade clerk in its Head Office, Lahore.
- (63) In May, 1945, a branch of the bank was opened at Madras and he was sent there as a senior grade clerk. From Madras he was sent to Trivandrum branch after about two years to work as officiating Accountant.
- (64) On 29th December, 1947 he made an application for one month's leave with effect from 12th January, 1948 but before any order on that application was conveyed to him he left Trivandrum with the alleged oral permission of the Manager on 13th January, 1948.
- (65) He applied for further leave from 14th February, 1948 to 14th March, 1948 on medical ground. It was thereupon ordered that he should be charge sheeted on his return for leaving Trivandrum without due permission and for certain irregularities made by him during the period of his service at that place. An order was also made for his suspension.
- (66) He again applied for further leave from 15th March, 1948 to 20th April, 1948. He was thereupon informed that he was under suspension and that consequently the question of any leave did not arise.
- (67) On his return on 20th April, 1948, he was served with a charge sheet of which Ex. D/1 is a correct copy. A copy of his reply is exhibited as D.2. He admitted most of the alleged irregularities but stated that they were made in accordance with the instructions of the Manager.

- (68) Later on, he himself tendered his resignation on 31st July, 1948, vide its copy of Ex. D.3, and received Rs. 453-4-0 from the Madras branch of the bank and gave a receipt of which Ex. D.4 is a copy in full and final settlement of his dues. His case now is that his resignation was not voluntary but was due to the following reasons:—
  - (a) A charge sheet was given to me for a true statement which put me to worries;
  - (b) Sitting quite homeless, penniless without any suspension orders at a place where I had no means of livelihood. No payment was made to me since 1st January 1948 by the bank;
  - (c) I was threatened by the Manager, branch office, Madras that I would be dismissed if I did not resign;
  - (d) Partition of India on account of which my dependants were displaced and I was sitting at a place far away from them not knowing what happened to them.
- (69) With the exception of his own statement that the allegations of facts in his written statement and rejoinder are correct, there is no independant reliable evidence in support of his claim. He also absented himself at a later stage of the proceedings of his case and did not care to come forward to support it in spite of his having been informed of the subsequent dates of hearing. That being so, I do not see any ground for interference and reject his claim.
  - 26. Shri Rikhi Kesh Dhawan.

Shri Rikhi Kesh Dhawan, workman, in person.

Shri O. P. Gupta with

- (70) In pursuance of an agreement dated 30th January, 1943, of which Ex. D.1 is a correct copy, Shri Rikhi Kesh Dhawan was appointed a Cashier Contractor to the Punjab National Bank for its Mandi Burewala (District Multan) and Pakpatam (District Montgomery) branches and also working cashier for Mandi Burewala branch. For termination of his service, there was a provision of three month's notice on either side or salary of that period in lieu of the same. His dues were fixed at Rs. 90 per mensem, that is, Rs. 20 for risk cover and Rs. 70 as salary of working cashier.
- (71) In Burewala branch he worked as Cashier with one assistant as 'Hundi Presenter' nominated by him but paid by the bank. While in Pakpatan branch. his nominee, approved by the bank, worked as cashier. These branches were closed in August, 1947 due to the partition of the Punjab and he came to Ferozpur on 30th August, 1947. After an exchange of some letters, he subsequently reported himself for duty at the head office of the bank at Delhi. On 4th October, 1947. Lala Amar Nath Chopra, Secretary of the bank, made an order that his services should be dispensed with and that he should be paid the balance of his pay including one month's notice pay. His case is that he thereupon requested the Secretary that according to the agreement he was entitled to get three months' notice pay together with the risk cower of both the branches. The bank's reply to that request was that his services as working cashier were dispensed with and that the question of service as contractor cashier would be decided later on after the salvage work of the two branches was carried out.
- (72) The security deposited by Shri Dhawan together with interest thereon unto the date of payment was duly paid to him along with the money of his G.P. Fund.
- (73) Shrl Rikhi Kesh Dhawan first put in his claim before the Sen Tribunal for the refund of his security, G.P. Fund and payment of notice pay and risk cover etc., but the Tribunal refused to give any direction to the bank relating to that claim on the ground that he was not entitled to risk cover, because it was paid only when he handled cash and as the business was closed, there was no occasion for handling cash.
- (74) As the Sen award was set aside on a technical ground by the Supreme Court. Shri Dhawan again pressed his claim and it was referred to this Tribunal for adjudication.
- (75) The preliminary objection raised on behalf of the bank that Shri Dhawan is not a workman as defined in section 2(s) of the Industrial Disputes Act, 1947, carries weight. According to that Act, workman means, any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical for hire or reward etc., etc.

- (76) So far as Shri Dhawan's capacity as Cashier-Contractor was concerned he could in no way be considered as a workman. He was at liberty to nominate a person of his choice to carry on the work of cashier and that nominee on approval by the bank was paid by it but he was in no way an employee of the bank. His position remained the same when he chose to work himself as a cashier. On merits also he is not entitled to any relief. The closing of the bank's branches at Burewala and Pakpatan was not the choice of the bank but was due to the circumstances beyond its control.
- (77) Shri Dhawan put in appearance in this Tribunal only once and subsequently did not care to attend in spite of due service of notice on him to meet the objections raised by the bank. The result, therefore, is that his claim is rejected.
  - 27. Shri Shiv Charan Lal Puri.

Shri Shiv Charan Lal Puri, workman with

Shri H. L. Puri of the Union.

Shri O. P. Gupta with

- (78) Shri Shiv Charan Lal Puri entered the service of the bank as a clerk in 1922 and during the period of his service, he worked in various capacities, such as Accountant and Assistant Manager etc. and for a short time he also worked as a Manager of one of the bank's branches. He was discharged from service on 10th May, 1948 on payment of one month's salary in lieu of notice. No specific reason is given in the order of discharge.
- (79) After the partition of the country he worked in the Accounts branch of the head office in Delhi. It was discovered that he had transferred current account of M/s. Bhagwan Das & Bros. with a balance of Rs. 22,638-2-9 to the branch office, Fountain, Delhi, which was originally maintained at the branch office, Lahore city. It was an account of a Joint Hindu Family Firm, whose Karta, Shri Ganpat Rai had died with the result that the account was marked "Operation stopped—Party died".
- (80) These remarks existed in the ledger of Lahore city branch and had been copied in the statements of account brought forward from Lahore office. When the account was reopened, similar remarks were made by Shri Shiv Charan Lal Puri in the books of accounts office. But he negligently did not care to take notice of these remarks when he was called by the department concerned to submit his report on the account, with the result that orders were passed for the transfer of this account to the Fountain, Delhi branch as requested by the man concerned in the account. He again passed the voucher Ex. D.5 himself and failed to notice the aforesaid remarks. The result was that the party withdrew Rs. 17,000 from the account. But it is admitted by the management that the bank did not actually suffer any loss due to that withdrawal. Shri Shiv Charan Lal Puri was charge sheeted for this negligence of his and his explanation was that the mistake was due to oversight on account of rush of work. Annexure 'A' is a copy of the charge sheet along with his replies.
- (81) The bank's case is that as Mr. Puri's explanation was unsatisfactory it would have been justified in dismissing him but in view of his long service his services were terminated on payment of one month's salary in lieu of notice.
- (82) It is significant that Shri Puri did not take any action by way of appeal or representation in the matter but withdrew his provident fund money and his security by applying for the same. He made a move in the matter only when he made his application to the Sen Tribunal on 22nd April, 1950.
- (83) Exs. P.1 to P.8 are copies of certificates given to him by his officers at different times. All of them describe him as efficient, honest and hard working hand. Ex. P.2 was given to him after his discharge by the Manager of Pakistan branch. It is very important that he is described therein as a thoroughly experienced hand and his work and conduct is quite satisfactory throughout his service. There are some adverse remarks also against him by certain officers of his.
- (84) Taking into consideration the fact that he was a refugee and had according to him, lost everything while leaving Pakistan, the Sen Tribunal, though coming to the conclusion that his case was not a case of victimisation, expressed a hope that the bank would reconsider his case. It appears that the bank did not take any action on that recommendation.

- (85) As the Sen award was set aside on a technical ground by the Supreme Court, Shri Puri's case was referred to this Tribunal for adjudication. His prayer is that he should be reinstated and that all arrears of salary etc. since his date of discharge together with increments due thereon along with allowances be paid to him.
- (86) The preliminary objection raised on behalf of the bank that Shri Puri was an officer and not a workman as defined in the Industrial Disputes Act, carries no weight. Though he officiated off and on as an Assistant Manager and at one time as Manager also for sometime. He was only a clerk at the time of his discharge. In the charge sheet also he is described as a clerk.
- (87) It is, no doubt, correct that he was negligent in the matter of the transfer of account of Bhagwan Das & Bros., but two officers of the bank, namely Gauri Shanker, Accountant and the Manager were also to blame to a certain extent because they too signed the voucher without caring to satisfy themselves as to the true state of affairs. Moreover, as already observed, it is an admitted fact that the bank did not suffer any loss on account of the above mentioned mistake of Shri Puri.
- (88) In view of the facts that Shri Puri had served the bank quite faithfully for 26 years, that he was at the fag end of his service at the time of his discharge and that he was a refugee and according to him, had lost everything while leaving Pakistan, I would direct the bank to pay him eight months salary with allowances by way of compensation within a month of the publication of this award.
  - 36. Shri Chander Pal Gupta.

Shri Chander Pal Gupta, workman with

Shri P. C. Jain of U.P. Bank Employees Union.

Shri O. P. Gupta with

- (89) Shri Chander Pal Gupta was appointed as Godown-keeper on 23rd July, 1943 at the Aligarh branch of the bank and was subsequently transferred to the clerical department in 1945 and was confirmed on 1st April, 1946. In August, 1947, he successfully applied for medical leave for one month from 20th August, 1947. On 1st September, 1947, he applied for the extension of his leave by two months with permission to leave the station. On 2nd September, vide copy of letter Ex. D.2, he was required to report his condition before his leave could be sanctioned or he could be permitted to leave the station. It appears that he again applied for two months' leave with effect from 16th September after he had already left the station without the permission of the bank authority. On receipt of that application, the Manager again directed him to appear personally at the bank premises as also asked for in the previous letter and also to show cause why he left the station without prior permission. The letters dated 2nd September, 1947 and 16th September, 1947 could not be delivered to him because he was out of station. He states that both these letters were delivered to him when he attended the bank on 17th November, 1947, though he failed to make any mention of the receipt of these letters in his representation to the Sastri Tribunal.
- (90) It appears that his leave application was supported by the certificate of a qualified doctor, counter-signed by the local Civil Surgeon. The doctor giving that certificate had also recommended change of climate. That application of his was forwarded by the local Manager to the Head Office with the following remarks:—
  - "So far as the purpose of leave is concerned, we have reasons to believe that although Mr. Gupta has submitted a medical certificate of a M.B. B.S. Doctor and somehow got the certificate counter-signed by the local Civil Surgeon, he does not actually need any long leave for his own convalescence. His wife is said to have been ailing for

sometime past and he is getting her treated at Bulandshahr under his personal attendance. For the above purpose, Mr. Gupta has left for Bulandshahr about the end of last month without obtaining our previous permission and he has not called on us to report his condition in spite of our asking him to do so. In the above circumstances and in the light of our authentic information Mr. Gupta does not propse to resume his duty, we would prefer that his services may be terminated by giving him one month's pay in lieu of notice and that another hand may be supplied to us in his place immediately, so that our work may not suffer any more for shortage of staff."

- '(91) On the above recommendation, his services were terminated with effect from 3rd October, 1947 by payment of one month's salary in lieu of notice. He was treated as on leave from 20th August, 1947 to 3rd October, 1947, the entire period he could avail of.
- (92) It is stated by Mr. Gupta and denicd by the bank that he served a registered notice on the bank on 27th March, 1948, demanding reinstatement. He also states that he was called by the branch Manager who orally assured him to take him back in service. This allegation is denied by the bank. No registration receipt nor acknowledgement due is forthcoming. It appears that Shri Gupta did not take any further action in the matter till he filed his petition before the Sen Tribunal in April, 1950.
- (93) His petition for reinstatement was rejected by the Sen Tribunal on the ground that his silence for such a long period was inconsistent with his having suffered uninvited wrong at the hands of his employers. As the Sen award was set aside by the Supreme Court on a technical ground, the petitioner's case has been referred to this Tribunal for fresh adjudication.
- (94) It is, no doubt, correct that he was not charge-sheeted before his discharge but at the same time it is apparent that he left the station without obtaining the permission of the bank's authorities which he was bound to obtain according to the rules of service. He also left the station without leaving his change of address, with the result that he deprived the bank of the means of communicating its orders to him. He also never cared to ascertain the fate of his leave application.
- (95) Taking into consideration the facts that the bank had no sufficient grounds for disbelieving the doctor's recommendation on Shri Gupta's application for leave and that he was not charge-sheeted before his discharge along with the other relevant facts referred to above, I am of the opinion that the petitioner is not entitled to reinstatement but is only entitled to get reasonable compensation which I fix at two months salary with allowances for his having put in more than four years service and further two months salary with allowances in lieu of three months notice instead of one month's notice as laid down by the Sastri award. This four months' salary with allowances shall be paid to him by the bank within a month of the publication of this award.
  - 37. Shri Saran Dayal Nigam.

## PRESENT:

- Shri J. N. Mahrotra, General Secretary,
  - U.P. Bank employees Union, Kanpur branch-For the workman.
- Shri O. P. Gupta with
- Shri M. K. Jain-For the bank.
- (96) On Shri Saran Dayal Nigam's application, dated 6th November, 1946, he was informed that he could be taken in the service of the bank at an initial salary of Rs. 125 plus Rs. 30 as dearness allowance to be confirmed after one year's satisfactory work and conduct at Rs. 150 as pay plus usual allowances. But by a subsequent letter dated 30th November, 1946 the probationary period was reduced to six months. He joined the servcie on 1st December, 1946. The letter of appointment is dated 29th November, 1946 and it is clearly stated therein that he was to deposit with the bank a service security of Rs. 2,500 before confirmation.

- (97) An initial deposit of Rs. 125 and monthly deductions from his pay at Rs. 20 were appropriated to the amount of security which he was required to deposit. In August, 1947, a further amount of Rs. 800 was deposited by him. Subsequently, when the deposit made by him amounted to Rs. 1,165 he was confirmed in January, 1948 on the report of the Manager under whom he was then working. It appears that the bank did not press for the deposit of the full amount of security as given in the letter of appointment Ex. D.2.
- (98) The bank's objection that Mr. Nigam being a supervisor does not fall within the definition of workman as given in section 2(s) of the Industrial Disputes Act, apparently carries no weight and is consequently disallowed.
- (99) Shri Nigam's complaint now is that he ought to have been confirmed six months after the commencement of his service, even though full security amount had not been deposited by him and that his increment should have been allowed to him after he had put in one year's service. On the other hand, the bank's reply is that his confirmation was subject to the deposit of the full amount of security and the increment was to become due one year after the date of confirmation.
- (100) In answer to the bank's objections, Shri Nigam pointed out that under the Bye-laws of the bank, there is a provision for deduction from the salary of a particular amount every month towards the security and he urges that insistence on payment of a greater amount than the above mentioned deductions before confirmation is a mere ruse or trick to avoid increase of salary and allowances. There is no substance in this contention. The bank was not bound to take the security in instalments under the bye-laws as this would take several years before the security amount as mentioned in the letter of appointment could be made up. The mere fact that the bank did not insist on payment of full amount of security and confirmed him after he had deposited Rs. 1,165, was only a favour by the bank and not a valid ground for the employee to insist on confirmation after six months of the commencement of his service.
- (101) In this connection, the letter Ex. D.1 sent by the head office to the Manager of the branch office is important and reads thus:—
  - "We have to advise that as per rules, Mr. Nigam should deposit security equal to ten times of his salary forthwith and ten times by monthly instalments equal of one-sixth of his salary. Since his security deposit account shows a credit balance of Rs. 165 we regret it is not possible to take up his case for confirmation with the head office unless he completes his security required under the rules."
- (102) It is also significant that Mr. Nigam never requested for confirmation after six months' of his service or for any, increment after one year's service as now claimed by him. The result, therefore, is that I do not see any ground for interference and reject his claim.
  - 41. Shri Munshi Lal.

Shri Munshi Lal, workman with

Shri P. C. Jain of U.P. Bank Employees Union.

Shri Om Parkash Gupta with

Shri M. K. Jain-For the bank.

- (103) The parties compromised the dispute and the workman on receipt of two months salary including allowances gave up his claim. There is, therefore, now no occasion for any direction in this case.
  - 42. Shri Vinayak Prasad.
- (104) Notice issued to the workman came back with a report that he was dead. The question of adjudication, therefore, does not arise in this case.

(Sd.) RAM KANWAR, Industrial Tribunal, Delhi.

The 1st May, 1954.

# Annexure A THE PUNJAB NATIONAL BANK LIMITED

Delhi, 6th March, 1948.

Mr. Shiv Charan Lal Puri,

Clerk,

Accounts Office.

The Punjab National Bank Ltd.,

Delhi.

Dear Sir,

Reg.:—Current account of Messrs. Bhagwan Das Bros., Gramophone Delears with branch office, Lahore City.

With reference to the wrong transfer of the above account to our branch office Fountain, Delhi and your verbal explanation therefor the following charge-sheet is hereby handed over to you for your written explanation in the space provided for against each question and to return the same in original:—

 Did you bring the statement of accounts of Branch office Lahore City prepared (from the original ledger of the said Branch lying at Lahore) in your own handwriting ?

Yes, please.

2. There was a remark "Operation stopped—party died" given against the current account in the above name in the original ledger of branch office, Lahore City. Did you copy this remark also on the statement of account prepared by you from this ledger?

Yes, please.

3. You opened these accounts again in the ledger in our office from the statement of accounts brought by you. Did you again copy this remark, 'Operation stopped—party died' in red ink against this account in the ledger?

Yes, please.

- 4. Two ledgers dated 8-10-47 and 6-1-48 received from the party regarding transfer of the account were sent to our office for our report regarding the same by the District Manager, Lahore. The report was given by you on 10-1-48 in your own handwriting. Why did you not make any mention of the remark, "operation stopped—party died" in your report sent to the District Manager, Lahore?
- As there were large number of enquiries and transfer to a/cs, to be attended by me as a clerk, so it seems to have escaped through an oversight on a/c of rush of work. The omission is regretted very much.
- 5. After the sanction of transfer of the amount was received from the District Manager Lahore Circle, why did you transfer the account to Branch Office, Fountain Delhi in face of the note "Operation stopped—party died", appearing against this account on the Ledger ?
- I was working as a clerk on the ledger and this appears have been done through oversight due to rush of work. The Branch was requested in the T.P.O. to obtain proper identification and ascertain the constitution of the firm and the persons auscrutinise thorised to sign. Besides the above safeguards the branch asked to get indemnity bond with respectable surety. The omission is regretted very much.

6. After the account was transferred to Branch Office Fountain, Delhi, a letter was received by our office from the Superintendent Law and was dealt with you. Why did you not bring the case to the notice of the undersigned or the Manager Accounts at this stage. The day on which the letter was received from Supdt. I was not working on the Lahore City Ledger but it but it was received by another clerk working on that ledger. As he had to deal with the case so I presumed that he had brought the case to the notice of your goodself or the Manager Accounts. Moreover the letter replied to Law and information in writing conveyed to the B/O Fountain, Delhi was sent through the proper authority.

7. Is it not a fact that after receiving the said letter from the Superintendent Law Department you went personally to our Branch Office Fountain, Delhi, asking them to stop operation upon the account instead of bringing the case to the notice of the authorities?

I did not receive the letter as previously explained but the letter was received by the clerk concerned. I helped him no doubt in the prompt disposal of the case, i.e., stopping operation upon the account etc. As for bringing the case to the notice of the authorities it was presumed that the clerk concerned had brought it to the notice of the authorities. Besides that letter replied to Supdt. Law was considered to have brought the fact in the knowledge of the authorities. The party is reported to have double the deposits in the Branch than this account and the instruc-tions issued by the Supdt. Law are said to have been completed by the party.

(Sd.) T. M. SINGH, Superintendent, Accounts. The 6th March, 1948.

(Sd.) SHIV CHARAN LAL.

[No. LR-100(98).]

P. S. EASWARAN, Under Secy.